AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

6-7-79
Vol. 44 No. 111
Pages 32635-33040

# federal register

Thursday
June 7, 1979

## Highlights

32635 **Independent Water Project Review** Executive order

32646 **Interest on Deposits** FRS eliminates minimum denomination requirements imposed on certain time deposits, modifies interest forfeiture penalty imposed for early withdrawal and increases the ceiling rate of interest on savings deposits to 5¼ per cent; effective 7-1-79

33028 **Safe Schools Program** HEW/OE issues proposals governing the awards of discretionary grants for developing projects designed to prevent, reduce, and encourage the reporting of serious crime to local law enforcement agencies; comments by 8-6-79

33036 **Preschool Partnership Program** HEW/OE proposes regulations governing the awarding of direct discretionary grants to establish programs of educational service; comments by 8-6-79

33022 **Correction Education Demonstration Program** HEW/OE proposes financial assistance for the purpose of developing projects relating to the academic and vocational education of juvenile delinquents, youth offenders, and adult criminal offenders; comments by 8-6-79

32657 **Arbitrage Bonds** Treasury/IRS issues income tax regulations; effective 5-31-79

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**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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**Area Code 202–523–5240**

# Highlights

**32711** **Mobile Home Construction and Safety Standards** HUD request comments on fire safety, egress safety, transportability, energy conservation, structural system performance, wind safety, freezing, and glazing requirements; comments by 8–6–79

**32699** **Antarctica Conservation Act of 1978** NSF acts to conserve and protect native animals and plants and to protect the Antarctic ecological systems, effective 7–1–79

**32854** **National Pollutant Discharge Elimination System** EPA revises program to clarify, improve, fill in significant gaps in coverage and make regulatory changes necessary under the 1977 amendments to the Clean Water Act; effective 6–14 and 8–13, and 10–12–79; comments by 8–6–79 (Part II of this issue)

**32643** **Mandatory Petroleum Allocation** DOE/ERA establishes allocation levels for crude oil and petroleum products supplied to the Department of Defense; effective 6–7–79

**32645** **Mandatory Petroleum Price Regulations** DOE/ERA removes DOE octane posting requirements to avoid conflicting with more comprehensive FTC requirements; effective 6–1–79

**32715** **National Forest System** USDA/FS announces Committee of Scientists meeting on proposed rules to guide land and resource management planning; meeting 6–20 and 6–21–79

**32651** **Freedom of Information** Metric Board adopts procedures to afford maximum access to the public to information; effective 6–7–79

**32972** **Hazardous Materials** DOT/MTB proposes numerical identification system and improved emergency response capability; comments by 8–7–79

**32758** **Generalized System of Preferences** Special Representative for Trade Negotiations publishes results of 1978 annual review of petitions and notice of 7–17–79 deadline for next full review; public hearings during the week of 9–24–79

**32637** **Wrapping of Cotton** USDA/CCC issues specifications governing cotton bale packaging materials used for 1979 and subsequent crops cotton pledged for price support loans; effective 6–7–79

**32834** **Sunshine Act Meetings**

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**32958** **Part III, Commerce**
**32972** **Part IV, DOT/MTB**
**33022** **Part V, HEW/OE**
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# Presidential Documents

Title 3—

The President

## Executive Order 12141 of June 5, 1979

## Independent Water Project Review

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to provide for an orderly implementation of the independent review of Federal water resource programs and projects, subsections (b) and (c) of Section 1–105 of Executive Order No. 12113 of January 4, 1979, are hereby amended to read as follows:

"(b) After October 1, 1979, an agency shall not submit to the Council, during any calendar quarter, more than one-third of the total reports, proposals, and plans scheduled for review during any one fiscal year.

"(c) The Chairman of the Council, or his designee, shall transmit the results of the impartial technical review to the appropriate agency head. The transmittal shall include identification of any specific variations from Council approved procedures and manuals and the steps necessary to bring the plan into conformance. The results of the review shall be transmitted to the agency head within 60 days of the agency's submission of the report, proposal, or plan provided that funds and other resources have been made available for the review.".

Jimmy Carter

THE WHITE HOUSE,
*June 5, 1979.*

[FR Doc. 79–17843
Filed 6–5–79; 2:56 pm]
Billing code 3195–01–M

# Rules and Regulations

Federal Register
Vol. 44, No. 111
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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 month.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 908

[Valencia Orange Regulation 615]

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

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period June 8–14, 1979. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

**EFFECTIVE DATE:** June 8, 1979.

**FOR FURTHER INFORMATION CONTACT:** Malvin E. McGaha, 202–447–5975.

**SUPPLEMENTARY INFORMATION:** *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that the action will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on June 5, 1979 to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports the demand for Valencia oranges has turned dull.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), 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 policy of the act. Interested persons were given an opportunity to submit information and views on the regulations at an open meeting. It is necessary 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.

**§ 908.915 Valencia Orange Regulation 615.**

*Order.* (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period June 8, 1979, through June 14, 1979, are established as follows:

(1) District 1: 336,000 cartons;

(2) District 2: 264,000 cartons;

(3) District 3: Unlimited.

(b) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" mean the same as defined in the marketing order.

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

Dated: June 6, 1979.

**D. S. Kuryloski,**

*Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 79-18017 Filed 6-6-79; 11:12 am]

BILLING CODE 3410-02-M

### Commodity Credit Corporation

### 7 CFR Part 1427

### Wrapping of Cotton; Specifications for Bale Packaging Materials

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule provides the specifications governing cotton bale packaging materials used for 1979 and subsequent crops cotton pledged for price support loans. This rule is needed in order that producers and others will know what materials are acceptable to CCC. Bales of cotton will be acceptable for price support loans only if they conform to these specifications.

**EFFECTIVE DATE:** June 7, 1979.

**FOR FURTHER INFORMATION CONTACT:** Dalton J. Ustynik, ASCS, (202) 447–6611, P.O. Box 2415, Washington, D.C. 20013.

**SUPPLEMENTARY INFORMATION:** On September 1, 1978, Commodity Credit Corporation (CCC) published in the **Federal Register** (43 FR 39118) a notice that the Department proposed to make certain determinations concerning the 1979 crops of upland and extra long staple cotton. Such determinations included a determination of the specifications for bale packaging materials applicable to 1979 crop cotton pledged to CCC for price support loans.

Four responses were received concerning the specifications. Three recommended adopting the specifications as recommended by the Cotton Industry Bale Packaging Committee and one recommended that all wrapping material contain at least 85 percent cotton. In addition to changes published on January 21, 1979, (44 FR 5641), the Committee recommended that (1) twelve pound new and salvage jute bagging be dropped from the list of approved packaging material, (2) nine pound salvage jute material be approved, and (3) cotton bagging patterns be approved for use on all bales and cotton bags be approved for use on compressed cotton. After consideration of all responses to the notice and recommendations made by the committee, it has been determined that the specifications will be revised to eliminate twelve pound new and salvage jute bagging as approved packaging material, that nine pound salvage jute material be approved, and that cotton bagging be approved for use on all bales and cotton bags be approved for use on compressed cotton. These revised specifications are designed to lower tare weights, while still adequately protecting the cotton, and to improve the management of tare weights.

Accordingly, the Specifications for Bale Packaging Materials Used in Wrapping Cotton published in 43 FR 19193 on May 4, 1978, as amended, are revised to read as set forth below, effective with the 1979 crop of cotton. The material previously appearing in these regulations remains in full force and effect as to the crop to which it was applicable.

## PART 1427—COTTON

* * * * *

### Subpart—Specifications for Bale Packaging Materials

Sec.

1427.1901 Purpose.
1427.1902 Specifications for bale ties and buckles.
1427.1903 Specifications for bagging.
1427.1904 Official tare weights.
1427.1905 Test methods.

**Authority:** Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 (b) and (c); secs. 101, 103, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444, 1421).)

### Subpart—Specifications for Bale Packaging Materials

#### § 1427.1901 Purpose.

This subpart is for the purpose of announcing the specifications applicable to bale packaging materials for packaging the 1979 and subsequent crops of cotton tendered to CCC for loans, unless otherwise approved by the Executive Vice President, CCC, or his designee: *Provided, however,* That all bales of cotton packaged and identified with the testing programs of the Cotton Industry Bale Packaging Committee sponsored by the National Cotton Council of America will be exempt from the provisions of this subpart, and any bale packaging materials carried over from 1978 which were eligible for packaging 1978 crop loan cotton also may be used to package 1979 crop cotton pledged for loans.

#### § 1427.1902 Specifications for bale ties and buckles.

Any fixed length bale ties used on flat bales shall not exceed 10 feet, 3 inches in length, excluding overlap. All ties and buckles or fasteners must be coated or finished with a rust inhibitor. All ties which are underneath the wrapping material shall be wire or cold rolled high tensile steel strapping.

(a) *General requirements*—(1) *Number of ties required.* (i) Flat bales (bales having densities of less than 20 pounds per cubic foot) must have not less than 6 ties.

(ii) Standard density bales (bales having densities of at least 20 pounds but less than 28 pounds per cubic foot) must have not less than 8 ties.

(iii) Universal density bales (bales having densities of 28 pounds or more per cubic foot) must have not less than 8 ties.

(2) *Flat bales packaged with nonreuseable ties.* Except for bales stored only in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, if the ties on a bale are not suitable for reuse when the bale is compressed, the ties will not be deemed to meet these specifications unless the producer has prepaid any warehouse charge for furnishing new bale ties. If the bale is stored at a warehouse not having compress facilities and bales shipped from the warehouse are normally compressed in transit, the warehouse receipt must show that the bale ties are not suitable for reuse when the bale is compressed and the charge assessed by the nearest compress in line of transit for furnishing new bale ties will be deducted from the loan proceeds.

(b) *Conventional hot rolled steel ties and buckles.* The total weight of bale ties and buckles to tie each bale of cotton shall not be less than 8½ pounds. Such ties may be used only on flat, modified flat and bales compressed at a warehouse.

(c) *Cold rolled high tensile steel strapping.* The supplier's name or trademark must be printed or embossed on every 36 inches of strapping.

(1) *For use on flat bales and standard density and universal density and universal density bales compressed at a warehouse.* The strapping shall have a minimum width of three-fourths of an inch and minimum thickness of 0.025 inch with zero tolerance, minimum weight of 1 pound per 15.7 linear feet of strapping or 4 pounds per bale of cotton, minimum breaking strength of 2,400 pounds with a joint strength of not less than 2,040 pounds.

(2) *For use on gin standard density and gin universal density bales.* The strapping shall have a minimum width of three-fourths of an inch and minimum thickness of 0.031 inch with zero tolerance, minimum weight of 1 pound per 12.7 linear feet of strapping or 5 pounds per bale of cotton and minimum breaking strength of 3,200 pounds with a joint strength of not less than 2,720 pounds for gin standard density bales or 4,000 pounds with a joint strength of not less than 3,400 pounds for gin universal density bales.

(3) *Keylock type fixed length tie for use on flat bales and universal density bales compressed at a warehouse.* The bale tie must have a minimum width of 0.74 inches and a minimum thickness of 0.025 inches, minimum weight of 4 pounds per bale of cotton, minimum breaking strength of 3,200 pounds with a joint strength of not less than 2,700 pounds. The tie shall be constructed so as not to disengage at the joint while tucking or while being handled with clamp trucks.

(d) *Wire ties.* Ties must be manufactured from wire which conform to ASTM–A–510 issued by the American Society for Testing Materials (ASTM). Each bundle of wire shall bear a certification that the wire ties have been manufactured according to the specifications for Bale Packaging Materials as published in Part 1427, Chapter XIV, Title 7 of the Code of Federal Regulations. The certification shall also show the name and address of the wire tie manufacturer and contain a quality control code which will permit the ties to be identified to the 2,000 pound lot and/or wire carrier. Wire tie manufacturers shall follow a regular procedure of testing and inspection which involves a minimum of one break test on a sample from each 2,000 pound lot and/or wire carrier. Wire ties shall be fabricated within the United States.

(1) *For use on flat bales and bales compressed to standard density and universal density at a warehouse*—(i) *Square knot type wire.* The ties shall not be smaller than 10-gauge with a minimum joint strength of 1,850 pounds including the connection. Joints may be on side of bales.

(ii) *Crosshead type wire.* The ties shall not be smaller than 10-gauge with a minimum joint strength of 1,650 pounds including the connection. The minimum elongation of the wire shall be one inch per 10 inches. Joints may be on side of bales.

(2) *For use on gin standard density and gin universal density bales.* The ties shall be not smaller than 9-gauge. The breaking strength of the wire must not be less than 3,400 pounds with a joint strength of not less than 2,100 pounds with the joints placed on the tops of the bales. If the joints are placed on the sides of the bales, the breaking strength of the wire must not be less than 3,200 pounds with a joint strength of not less than 3,040 pounds.

#### § 1427.1903 Specifications for bagging.

Except in cases where shrink-pack polyethylene bags, cotton bags, polypropylene half-bag panel combinations, or spiral sewn bags of burlap and/or polypropylene are used, each bale must be wrapped with a pattern of bagging consisting of two pieces (panels) of bagging material. All

bagging material must be clean, in sound condition, and of sufficient strength to adequately protect the cotton. The material must not have salt or other corrosive material added and must not contain sisal or other hard fiber or any other material which will contaminate or adversely affect cotton as determined by the President or Executive Vice President, Commodity Credit Corporation.

(a) *New jute bagging used to wrap gin standard density and gin universal density bales.* Each one-half pattern (panel) of new jute bagging used for wrapping must not be less than 96 inches or more than 100 inches in length for gin universal density bales and not less than 100 inches or more than 102 inches in length for gin standard density bales and must not be less than 40 or more than 48 inches in width. The bagging must contain not less than 150 warp yarns per 40 inches of bagging of a size equal to or larger than the weft (filling) yarns, must contain not less than 25 weft (filling) yarns per 12 inches of bagging and must weigh not less than 7½ and not more than 8½ pounds per pattern (two panels) at 13.75 percent moisture content (not moisture regain). A marker warp yarn of the same size as the remaining warp yarns, made of jute or plied cotton, dyed dark green with a colorfast, nonbleeding dye of a type which will not be subject to permanent staining of cotton fiber under normal weathering conditions must be placed in the center of each panel to designate the 8-pound tare weight of the bagging.

(b) *Compact center type new jute bagging*—(1) *Used to wrap flat bales (24 ounces per linear yard).* Each one-half pattern (panel) of compact center type new jute bagging used to wrap flat bales must not be less than 108 inches or more than 115 inches in length and must not be less than 46 inches in width. The bagging must contain a center panel not less than 32 inches wide and contain not less than 110 warp yarns and an outer edge not less than 7 inches wide containing not less than 13 warp yarns including selvage. The outer edge may contain more than 13 warp yarns and the center panel may exceed 32 inches provided the bagging contains not less than 41 warp yarns per 12 inches and still meet these specifications provided all other requirements contained herein are met. The warp yarn must be a size equal to or larger than the weft (filling) yarns. The bagging must contain not less than 25 weft (filling) yarns per 12 inches of bagging with a minimum weft yarn weight of 40 pounds per spindle (14,400 yards). The bagging must weigh not less than 8½ and not more than 9½ pounds per pattern (two panels) at 13.75 percent moisture content (not moisture regain). A marker warp yarn of the same size as the other warp yarns, made of jute or a plied cotton yarn, dyed dark blue with a colorfast, non-bleeding dye of a type which will not be subject to permanent staining of cotton fiber under normal weathering conditions must be placed in the center of each panel to designate the 9-pound tare weight.

(2) *Used to wrap gin standard and universal density bale.* Compact center type new jute bagging (24 ounces per linear yard) meeting the same width and fabric construction requirements for compact center type new jute bagging as used on flat bales cut to a length of not less than 98 inches or more than 101 inches in length, weighing not less than 7½ and not more than 8½ pounds per pattern (two panels) at 13.75 percent moisture content (not moisture regain) and containing a dark green center market yarn may be used to wrap gin standard and gin universal density bales.

(c) *Salvage jute (burlap) bagging*—(1) *General requirements.* Salvage jute (burlap) bagging must be processed specifically for cotton bale coverings from once-used good quality closely woven heavy jute bags previously used for sugar, coffee, cocoa, or other products approved by the President or Executive Vice President, CCC. Each one-half pattern (panel) must be composed of not more than three pieces of used bag cloth of the same construction and weight. There must not be more than two crosswise sewn seams and not more than one lengthwise sewn seam when measured across any single width of the panel in any one-half pattern (seams, hems, and necessary patches in the original bags from which the bagging is made will not be considered sewn seams). Overlap at seams and patches must not be greater than 3½ inches. Overlaps, patches, and hems sewn into bagging to increase the weight of lightweight material will not be permitted. Sewn seams must be such that the edges of the joined pieces coincide to make a symmetrical one-half pattern without appreciable displacement of the edge of one piece of bagging relative to the edge of the adjoining piece in the seam. Sewing must be with strong thread with not larger than ⅜ inch stitching.

(2) *To wrap flat bales.* Each one-half pattern (panel) used to wrap flat bales must not be less than 108 inches or more than 112 inches in length and must be not less than 48 inches or more than 52 inches in width. The bagging must weigh not less than 8½ and not more than 10 pounds per pattern (two panels) at 13.75 percent moisture content (not moisture regain).

(3) *To wrap modified flat bales.* Each one half pattern used to wrap modified flat bales must not be less than 106 inches or more than 112 inches in length and must not be less than 46 inches or more than 52 inches in width. The bagging must weigh not less than 8½ or more than 10 pounds per pattern (two panels) at 13.75 percent moisture content (not moisture regain.)

(4) *To wrap gin standard density and gin universal density bales.* Each one-half pattern (panel) used to wrap gin standard and gin universal density must not be less than 40 inches or more than 48 inches in width and must be not less than 96 inches or more than 102 inches in length. The bagging must weigh not less than 7½ and not more than 10 pounds per pattern (two panels) at 13.75 moisture content (not moisture regain).

(d) *Spiral sewn burlap bags used to wrap gin standard and gin universal density bales and bales compressed to standard density and universal density at a warehouse.*—(1) *Material.* Spiral sewn burlap bags used to wrap gin standard and gin universal density bales and bales compressed to standard density and universal density at a warehouse must be spiral sewn from new burlap which is not less than 60 inches wide before sewing and weighs not less than 13.25 ounces per linear yard (this corresponds to burlap weighing 8.9 ounces per 40-inch width). The material must have a true selvage on each side. Spiral sewn bags made from split burlap with raw edges will not be acceptable.

(2) *Bag size.* The bag size must be tailored to individual bale size at each location. Bags shall fit bales tightly, but must be large enough to minimize bursting and long enough to completely cover and secure heads of bales.

(3) *Seams.* Seams must be sewn with a type 401 stitch, minimum four stitches per inch, and 4/12 or 5/12 cotton thread, or 1,000 denier polypropylene thread meeting ultraviolet inhibitor concentration requirements of paragraph (g)(2)(iii) of this section, with breaking strength of 5 grams per denier.

(e) *Cotton bagging*—(1) *General requirements.* Bagging made from 100 percent cotton must weigh not less than 7.7 ounces per square yard with a minimum weight of 4 pounds per pattern for flat and modified bales, 3.1 pounds for gin standard density bales, 3 pounds for gin universal density bales, and bales compressed at a warehouse at 8.5 percent moisture content (not moisture regain).

(i) *Panel requirements.* Bales wrapped with cotton bagging must be tied with wire or high tensile steel strapping. Each panel of bagging must not be less than 48 inches in width, and 112 inches in length for flat or modified flat bales, 100 inches in length and 42 inches in width for gin standard density bales and 96 inches in length and 42 inches in width for gin universal density bales and compressed at a warehouse. Each panel must be constructed with true selvages on each side.

(ii) *Bag requirements.* Sewn cotton bags may be used to wrap gin standard, gin universal density and bales compressed at a warehouse.

(A) *Material.* The bagging must be constructed of warp knitted cotton fabric as specified in paragraph (g)(3) of this section. Bags may be constructed with two panels sewn on each side to form a bag or form a single folded pattern.

(B) *Bag size.* The bag size must be tailored to individual bale sizes at each location. Bags shall fit bales tightly but must be large enough to minimize bursting and long enough to completely cover and secure heads.

(C) *Seams.* Seams must be sewn with a type SSA–1 or LSA–1 seam, type 401 stitch, minimum 6 stitches per inch with 4/12 or 5/12 cotton thread.

(2) *Woven.* The bagging must contain not less than 120 warp yarns (plied or single) per 12 inches of bagging of a size equal to or larger than the weft (filling) yarns and must contain not less than 78 weft (filling) yarns (plied or single) per 12 inches of bagging.

(3) *Warp knitted.* The bagging must be constructed with not less than two guide bars. The bagging must contain not less than five wales per inch and not less than six courses per inch. All yarns (plied or single) must be form connected with each other. The bagging must have stabilized construction with elongation or stretch not less than 15 percent or more than 30 percent. Variation in tensile strength in wale and course direction must not exceed 20 percent. The bagging must have a minimum bursting strength of 75 pounds.

(f) *Polyethylene shrink-pack bags used to wrap gin standard density and gin universal density bales.* Polyethylene shrink-pack bags used to wrap gin standard and gin universal density bales must meet the following requirements:

(1) *Density.* The bag must be low density virgin polyethylene.

(2) *Color.* The bag must be clear.

(3) *Gauge.* The gauge shall be not less than 8 mil.

(4) *Gauge tolerance.* The average of any 20 evenly spaced points around the length and width of a bag must be within plus or minus 10 percent of 8 mil. Yield on any order of 2,000 pounds or more shall not vary more than plus or minus 3 percent from the nominal yield.

(5) *Tensile strength.* For machine (length) and transverse (cross) direction the tensile strength must be not less than 2,500 pounds per square inch, and for transverse (cross) direction, not less than 2,000 pounds per square inch.

(6) *Elongation.* For both machine (length) and transverse (cross) direction the elongation must be not less than 400 percent.

(7) *Impact resistance.* The impact resistance must be not less than 450 grams.

(8) *Slip characteristics.* Bags must be low slip (coefficient of friction not less than 0.50) with no anti-block or slip additive included.

(9) *Tagging.* A piece of woven yarn scrim not less than 5 inches by 7 inches and laminated on each side with polyethylene must be placed inside the bag on the head of bale and heat welded to the cover, or some other suitable reinforcing material must be bonded to the bag.

(10) *Tare weight.* Tare weight shall be not less than 2 pounds per shrink-pack bag.

(11) *Sealing head of bales.* Extra precaution must be taken in sealing heads of bales to provide maximum coverage and protection.

(12) *Shrink ratio.* The ratio of machine (length) direction shrink to the transverse (cross) direction shrink must not exceed 1.5:1.

(13) *Total tare weight.* The total tare weight (i.e. bag and ties) shall be printed on the bag. Printing shall read "total tare = lbs." and the bale tare weight shall be included in the appropriate space.

(14) *Bag size.* Each bag shall be not less than 87 inches in length when used on 54 inch by 20 inch presses and not less than 83 inches in length when used on 50 inch by 20 inch presses.

(g) *Polypropylene material*—(1) *General.* Polypropylene material used to wrap bales shall be new polypropylene fabric manufactured in the United States from yarn and resins produced in the United States and woven specifically for use on cotton bales. The bale covers shall be uniform in size and color, clean, unstained, and free of any extraneous material.

(2) *Yarns.* No scrap, reground, or reworked polymer shall be used, except that unoriented edge trim may be reground and directly recycled during operation of extruder.

(i) *Type.* The yarn shall be crystalline or isotatic polypropylene tape yarn.

(ii) *Dimension.* Yarn demensions shall be 2.1 mils thick, plus or minus 0.2 mil and 95 mils wide, plus or minus 2 mils.

(iii) *Inhibitor concentration.* The yarn shall be stabilized by a system containing organo-nickel complex ultraviolet light inhibitor. The yarn shall contain organo-nickel complex at a concentration of not less than 0.1 percent nickel as metal from the inhibitor. The Cotton Industry Bale Packaging Committee will have samples checked periodically by a private laboratory at manufacturers' expense.

(3) *Fabric woven from stabilized yarns*— (i) *Minimum weight.* The fabric must weigh an average of not less than 3 ounces per square yard and no test sample shall weigh less than 2.8 ounces per square yard.

(ii) *Yarn count.* There must be 12 warp yarns, plus or minus 1, per inch; and 10 weft yarns, plus or minus 1, per inch.

(iii) *Color.* The color of the fabric shall be translucent light gold, unless otherwise approved by the Cotton Industry Bale Packaging Committee. A different colored warp yarn meeting ultraviolet inhibitor concentration must be inserted in the center of each panel by the fabric manufacturer. The center of each panel must be marked in the weft direction with a clearly visible line running across the entire width of the panel or with a series of three lines having a minimum of 12 inches on each edge and a minimum of 6 inches in the center. The lines must be within one inch of the true center of the length of the panel.

(iv) *Tensile strength.* Minimum tensile strength shall be 125 pounds per inch average in the warp direction and 100 pounds per inch average in the weft direction. Ten samples shall be tested in each direction for this determination and no single test shall be more than 10 pounds per inch below the specified average.

(v) *Elongation.* Fabric shall have an elongation to break of not less than 15 percent average in both warp and weft directions. Ten samples shall be tested in each direction for this determination and no single test value shall be below 12 percent.

(vi) *Selvage.* Each outer edge of the fabric shall be a tucked selvage or natural selvage containing not less than the number of warp ends prevalent in the body of the fabric. A heat cut selvage will not be acceptable. Ends of cut sheets and spiral sewn bags must be

finished by heat cutting to give a pin test value of at least 40 pounds per inch.

(vii) *Air permeability.* The fabric in an unstressed state must permit not less than 5 cubic feet per minute per square foot, nor more than 50 cubic feet per minute per square foot of air flow.

(viii) *Weathering resistance.* The fabric shall retain not less than 70 percent of its original tensile breaking strength after 1,200 hours exposure to accelerated weathering.

(4) *Coatings.* Any coating added to the fabric to reduce gloss, fibrillation, slippage, or for other technical reasons, shall be as stable as the fabric to which it has been applied when exposed to accelerated weathering. Such coating must not adversely affect cotton which it is to contact.

(5) *Minimum panel size.* (i) Each panel of bagging must be not less than 52 inches in width and 112 inches in length for use on nonmodified flat presses (28 inch width bales).

(ii) Each panel of bagging must be not less than 48 inches in width and 112 inches in length for use on modified flat presses (25 inch width bales).

(iii) Each panel of bagging must be not less than 44 inches in width and 100 inches in length for use on gin standard density bales.

(iv) Each panel of bagging must be not less than 44 inches in width and 96 inches in length for use on gin universal density bales.

(6) *Additional specifications for spiral sewn bags.* Spiral sewn polypropylene bags must meet the following requirements:

(i) Fabric shall conform to the specifications for woven polypropylene fabric specifications.

(ii) The fabric from which each bag is sewn shall be a minimum of 60 inches in width.

(iii) The bag size must be tailored to individual bale size at each location. Bags shall fit bales tightly, but must be large enough to minimize bursting and long enough to completely cover and secure heads of bales.

(iv) Seams must be sewn in accordance with the following: Type SSN–1 Seam, type 401 stitch, minimum four stitches per inch, and 4/12 or 5/12 cotton thread, or 1,000 denier polypropylene thread meeting ultraviolet inhibitor concentration requirements of paragraph (g)(2)(iii) of this section, with breaking strength of 5 grams per denier. Sewn seams at bottom of bags must be a minimum of ¾ inch from heat cut edges and be of type SSA–1.

(7) *Additional requirements for half-bag panel combinations.* Half-bag panel combinations must meet the following requirements:

(i) Fabric shall conform to specifications for woven polypropylene fabric specifications.

(ii) The half-bag size must be tailored to individual bale size at each gin location.

(A) *Flat presses.* For flat presses each half-bag shall be not less than 36 inches in depth and each panel shall be not less than 48 inches in width and 112 inches in length.

(B) *Gin universal presses.* For 54 inch by 20 inch gin universal presses, each half-bag shall be not less than 32 inches in depth and each panel shall be not less than 40 inches in width and 98 inches in length. For 50 inch by 20 inch presses, each half-bag shall be not less than 34 inches in depth and each panel shall be not less than 40 inches in width and 96 inches in length.

(C) *Gin standard presses.* For gin standard presses, each half bag shall not be less than 40 inches in width and 100 inches in length.

(iii) Seams must be sewn in accordance with the following: Type SSN–1 seam, type 401 stitch, minimum four stitches per inch, and 4/12 or 5/12 cotton thread or 1,000 denier polypropylene thread meeting ultraviolet inhibitor concentration requirements of paragraph (g)(2)(iii) of this section, with breaking strength of 5 grams per denier. All cuts shall be heat cut or shall be rolled to prevent ravelling.

(8) *Identification markings.* Each panel and/or spiral sewn bag must have the name or trademark of the fabric manufacturer (that is, the company weaving the material) suitably printed no more than 36 inches apart and 8 to 12 inches from the panel selvage. Each identification mark shall be at least three-fourths inch in height but not more than one inch in height. The identification markings shall be placed on record with the Cotton Industry Bale Packaging Committee and CCC.

(9) *Inspection and certification requirements—(i) Responsibility for inspection.* The fabric manufacturer and the supplier are both responsible for performance of all inspection requirements as specified herein. They may use their own or any other facilities suitable for the performance of such inspection requirements, unless such facilities are disapproved by the Cotton Industry Bale Packaging Committee or CCC.

(ii) *Right to perform inspection or testing.* Reasonable inspection or tests deemed necessary may be performed by the Cotton Industry Bale Packaging Committee and/or CCC to assure that materials conform to prescribed specifications.

(iii) *Inspection or testing expense.* Expense for such inspection or testing shall be borne by the fabric manufacturer or supplier.

(iv) *Certification required by the Cotton Industry Bale Packaging Committee—*(A) *Submission of samples.* All manufacturers of polypropylene must submit samples to a private testing laboratory selected by the Cotton Industry Bale Packaging Committee or CCC for certification that materials meet all prescribed specifications.

(B) *Approved list.* Upon receipt of testing results, the Cotton Industry Bale Packaging Committee will publicize throughout the cotton industry a list of approved manufacturers and their trademarks.

(C) *Responsibility for components and materials.* The supplier and fabric manufacturer are responsible for insuring that components and materials used are manufactured, examined, and tested in accordance with approved specifications and standards.

(D) *Certification of fabric furnished.* Fabric manufacturers shall certify to customers that the fabric furnished has been manufactured in the United States from yarn and resins produced in the United States for use as cotton bale covers, and which meet the material specifications herein, and that the manufacturer is on the Cotton Industry Bale Packaging Committee's approved list.

**§ 1427.1904 Official tare weights.**

The following table shows official CCC tare weights for various combinations of approved wrapping material. CCC will not accept any bales for loans which carry a tare weight different than the one shown below:

(a) Tares for 1979 and Subsequent Crops:

| Wrapping material | Bale ties | |
|---|---|---|
| | Wire or high tensile steel strapping [6] | Hot rolled steel ties with buckles [7] |
| Woven Polypropylene [1] | 5 | 11 |
| Polyethelene bags, [2] burlap spiral bags, cotton | 7 | |
| Compact jute [3] for use on all bales and salvage jute on gin universal density and gin standard density bales only | 12 | 18 |

(b) Additional Tares for 1979 Crop Only (Carryover Bagging):

| Wrapping materials | Bale ties | |
|---|---|---|
| | Wire or high tensile steel strapping | Hot rolled steel ties with buckles |
| New 12 pound jute and salvage jute on flat bales only [4] | 15 | 21 |
| T-2 jute bagging [5] | 10 | 16 |

[1] Woven polypropylene can be identified by its pale yellow color. This category includes all patterns of polypropylene including two sheets, half bag/sheet combinations and spiral sewn bags. Such material must meet all other requirements in § 1427.1903(g).

[2] Polyethelene bags can be identified by the clear color. The total tare weight is printed on the bag. Burlap spiral bags can be identified by the lightweight burlap fabric sewn to form a bag which completely encloses a bale. Cotton bagging is any packaging material made from all cotton fiber. Bagging must meet all other requirements for that type of bagging set forth in § 1427.1903(d), (e), and (f).

[3] Compact jute can be identified by the dark blue or green center marking yarns on each panel of bagging. Salvage jute is commonly referred to as sugar bagging and can be identified by seams and markings indicating that the material was previously used for other commodities. Such bagging must meet all other requirements as set forth in § 1427.1903(b), and (c).

[4] Twelve-pound new jute can be distinguished from other approved new jute panels by the absence of center marking yarns. Salvage jute can be identified by seams and markings indicating that the material was previously used for other commodities.

[5] T-2 jute bagging can be identified by the red or black center marking yarn on each panel.

[6] Wire or strapping includes all wire or high tensile steel strapping other than conventional hot rolled steel ties with buckles and must meet all applicable requirements in § 1427.1902 (c) and (d).

[7] Bands with buckles consist of conventional hot rolled steel ties with buckles which meet requirements set forth in § 1427.1902(b).

### § 1427.1905 Test methods.

The following testing methods will be used by CCC in determining whether bagging and bale ties and buckles or fasteners used to package cotton tendered for CCC loans beginning with the 1979 crop of cotton meets the above specifications. Except for polyethylene shrink-pack bags, spiral sewn burlap bags, cotton bags, and bagging manufactured from polypropylene material, each sample of bagging selected for testing will consist of one-half pattern. (Each sample of polyethylene shrink-pack bag and spiral sewn burlap bag and cotton bag will consist of one bag polypropylene material selected for testing and will consist of a minimum of ten randomly selected panels or spiral sewn bags or an equivalent amount of flat goods in cases where the material is tested before it is in panel or spiral sewn bag form.)

(a) *Weight and strength of bale ties and buckles.* The bale ties and buckles will be weighed on suitable accurate scales and the weight determined to the nearest one-half pound. A bundle or package of ties and buckles may be weighed and averaged to determine the weight of ties and buckles necessary to package a bale of cotton. For high tensile steel strapping, a given number of feet of strapping will be weighed to determine the number of feet of strapping per pound. Breaking strength and joint strength tests will be made only when determined to be necessary.

(b) *Length.* The length of the sample will be measured directly using a measuring stick, steel tape, or other suitably graduated device. The sample will be laid out flat on a smooth horizontal surface and the length measured. Both salvages for jute and cotton panels will be measured and the length of each side of polyethylene shrink pack bags will be measured. The length of the sample will be the average of the two measurements rounded to the nearest inch. Jute and cotton measurements will be made on the sample in equilibrium with standard atmospheric conditions as specified in A.S.T.M. D 1776 62–T.

(c) *Width.* The width of the sample will be measured directly using a measuring stick, steel tape, or other suitably graduated device and will include the selvages. The sample will be laid out flat on a smooth horizontal surface and the measurements made perpendicular to the lengths (selvages in the case of jute and cotton). Three width measurements will be taken on each sample. One measurement will be made at the center of the sample and two other measurements will be made approximately 12 inches in from each end of the sample. The average of the three measurements rounded to the nearest inch, will be the width. For compact center type new jute, the compact center shall be measured between the outer edges of the outer-most yarns in the more compact area. The loosely woven edges shall be measured from the outer edge of the outer-most warp yarn of the compact area to the outside edge including selvage. Three width measurements will be taken at locations described above for other width measurements and averaged. Jute and cotton measurements will be made on the sample in equilibrium with standard atmospheric conditions as specified in A.S.T.M. D 1776 62–T.

(d) *Warp yarn count.* For new jute (except for the compact center type new jute) and woven cotton bagging, the number of warp ends in the width of the sample including the selvages will be counted at each end of the sample. The average of the two counts will be divided by the width, as determined above. This figure will be multiplied by 12 to detemine warp yarns per 12 inches of bagging or by 40 to determine warp yarns per 40 inches of bagging. For compact center type new jute bagging, the number of warp ends in the denser center area will be counted at each end of the sample and averaged. The average of the two counts will be the warp yarn count for the compact center section. The number of warp ends in the outer edges will be counted at each end and at each edge including selvages and averaged. The average of the two counts will be the warp yarn count for the outer edges. For polypropylene bagging, the number of warp ends in a 12 inch width of the sample will be counted. This figure will be divided by 12 to determine the warp yarns per inch of bagging.

(e) *Weft yarn count.* The number of weft (filling) yarns over a measured length of 36 inches on each sample of new jute, and woven cotton bagging will be counted. The number counted divided by 3 will be the weft yarn count per 12 inches. For polypropylene bagging, the number of weft ends in a 12 inch length of the sample will be counted. This figure will be divided by 12 to determine the weft yarns per inch of bagging.

(f) *Weight of bagging.* The weight of bagging, except for polypropylene material, will be determined by weighing on suitable accurate scales, and the weight per pattern will be determined to the nearest one-tenth pound. Several patterns (or bales of bagging patterns) may be weighed simultaneously and the weight averaged. The weight for jute bagging will be calculated on the basis of 13.75 percent moisture content (not moisture regain) and for cotton bagging on the basis of 8.5 percent moisture content (not moisture regain). (Polypropylene fabric weight will be determined as prescribed in paragraph (k) (3) of this section.)

(g) *Wale count of warp knitted cotton bagging.* The number of wales or ribs running lengthwise of the sample from warp knitted cotton bagging will be counted over a measured width (relaxed state) of 12 inches on each sample. The number counted divided by 12 will be the wale count per inch.

(h) *Course count of warp knitted cotton bagging.* The number of courses or loops which form a line horizontal to the wales or ribs will be counted over a measured length (relaxed state) of 12 inches on each sample of warp knitted cotton bagging. The number counted divided by 12 will be the course count per inch.

(i) *Additional tests on warp knitted cotton bagging.* Elongation or stretch properties of warp knitted cotton bagging will be tested at one pound per inch static load using methods as specified in A.S.T.M. D 2594. Bursting strength will be tested on an approved type of constant rate of traverse

machine equipped with a bursting attachment (ball burst) as specified in A.S.T.M. D 231.

(j) *Additional tests for polyethylene material.* The gauge and gauge tolerance of polyethylene material shall be tested in accordance with A.S.T.M. D 374. The tensile strength and elongation shall be tested in accordance with A.S.T.M. D 882–67. Impact resistance should be tested in accordance with A.S.T.M. Method B 1709–67 slip characteristics in accordance with A.S.T.M. D 1894. The ratio of machine direction shrink to transverse direction shrink will be calculated in accordance with A.S.T.M. D 2732.

(k) *Additonal test procedures for polypropylene material*— (1) *Yarn dimensions.* Polypropylene material shall also be tested as follows: Yarn dimensions will be tested as specified in A.S.T.M. D 3218–73T.

(2) *Inhibitor concentration.* Yarn shall be removed from the warp direction of each test sample and analyzed for ultraviolet inhibitor concentration by following applicable analytical test procedure as specified in method Military—B 52472B (ME) paragraph 4.4.2.7.2.2. atomic absorption method. Specimen yarns shall likewise be removed from the weft or fill direction and tested for inhibitor concentration. Values obtained less than 0.1 percent nickel as metal for the inhibitor in either warp or weft direction of the fabric shall be deemed nonconformance and constitute failure of this test.

(3) *Fabric weight.* The fabric weight per square yard shall be determined as specified in Federal Test Method Standard No. 191, method 5041.

(4) *Tensile strength and elongation.* A minimum of ten randomly selected samples will be tested for tensile strength and elongation to break at standard conditions and in accordance with Federal Test Method Standard No. 191.

(5) *Accelerated weathering*—(i) *Preparation of specimens.* The sample unit will be one finished panel or spiral sewn bag or an equivalent amount of flat goods. Three swatches 4 inches by 12 inches shall be cut from each principal direction (warp and weft) of the fabric. Each swatch shall be cut into two 4 inch by 6 inch test specimens: One specimen to be used for initial break strength and the other specimen to be used for break strength after accelerated weathering. The specimens shall be marked to indicate which are cut with the long dimension in the warp direction and which have the long dimension in the weft direction.

(ii) *Initial tensile breaking strength.* The marked control specimens shall be conditioned for 24 hours at the standard condition specified in Federal Test Method Standard No. 191 and shall be tested for breaking strength in accordance with Federal Test Method Standard No. 191, method 5100.1. The result shall be averaged for specimens in warp direction and averaged for specimens in weft direction and the averages shall be recorded as the initial breaking strength in warp and weft directions. An average in warp of less than 125 pounds or less than 100 pounds in the weft direction shall constitute failure of this test.

(iii) *Breaking tensile strength after accelerated weathering.* The balance of the specimens shall be tested in accordance with Federal Test Method Standard No. 191, method 5804 for not less than 1,200 hours, except that the black panel temperature shall be maintained at 155 F, plus or minus 3 F. The black panel temperature shall be read during the final 10 minutes of a cycle just before the water spray period starts. At the completion of 1,200 hours exposure to accelerated weathering, the specimens shall again be conditioned for 24 hours at the standard conditions specified in Federal Test Method Standard No. 191. After conditioning, the exposed specimens shall be tested for breaking strength in accordance with Federal Test Method Standard No. 191, method 5100.1. An average breaking strength of less than 70 percent of the initial average breaking strength recorded for its respective warp or fill yarn direction shall constitute failure of this test.

(6) *Ends of heat cut sheets and/or spiral sewn bags.* Heat cut ends of cotton bale cover sheets and spiral tubing shall be evaluated for heat cut strength as specified in ASTM Method D 751. Pin test values of less than 40 pounds, as per this method, shall constitute failure of this test.

(7) Air permeability. The fabric shall be tested for air permeability as specified in ASTM D 737–46. Air permeability values of less than 5 or more than 50 cubic feet per minute per square foot will constitute failure of this test.

This subpart is effective for all loans made on the 1979 and subsequent crops of cotton.

Note.—This rule has been determined to be not significant under the USDA criteria implementing Executive Order 12044. This rule contains necessary operating decisions needed to implement the national average cotton loan rate, announced on October 31, 1978, for which an approved Final Impact Statement is available from Mr. Charles Cunningham, ASCS, (202) 447–7873.

Signed at Washington, D.C. on May 30, 1979.

Stewart N. Smith,

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 79-17728 Filed 6-6-79; 8:45 am]

BILLING CODE 3410-05-M

## DEPARTMENT OF ENERGY

## Economic Regulatory Administration

## 10 CFR Part 211

[Docket No. ERA-R-79-29]

## Mandatory Petroleum Allocation Regulations; Levels for Department of Defense Uses

**AGENCY:** Department of Energy Economic Regulatory Administration.

**ACTION:** Final rule.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is today adopting an amendment to the current regulation establishing allocation levels for crude oil and petroleum products supplied to the Department of Defense (DOD). The amendment provides that DOD will be entitled to receive its current requirements for crude oil and allocated products only for essential military- and readiness-oriented operations, rather than all non-housekeeping uses as currently provided. All other DOD activities will be supplied at the allocation level applicable to the particular use involved, subject to suppliers' allocation fractions.

In recent years the DOD has pursued stringent conservation measures for petroleum consumption for nonessential uses and, as a result of its efforts, has reduced significantly its consumption of petroleum for such uses. In changing DOD's allocation level for nonessential activities, the amendment adopted today thus effectively makes the allocation regulations consistent with DOD's current practices regarding petroleum consumption for these activites.

**EFFECTIVE DATE:** This amendment is effective June 7, 1979.

**FOR FURTHER INFORMATION CONTACT:**

Robert C. Gillette, (Comment Procedures), Economic Regulatory Administration, Room 2222–A, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–5201.

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B–110, 2000 M

Street, N.W., Washington, D.C. 20461, (202) 634–2170.

William E. Caldwell (Regulations and Emergency Planning), Economic Regulatory Administration, Room 2304, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–8034.

Samuel M. Bradley (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252– 6754.

**SUPPLEMENTARY INFORMATION:**

I. *Introduction*
II. *Amendment Adopted*
III. *Procedural Requirements*
A. *Section 553(b) of the Administrative Procedure Act and Section 501 of the DOE Act*
B. *Section 404 of the DOE Act*
C. *Section 7 of the FEA Act*
D. *Section 553(d) of the Administrative Procedure Act*
E. *Executive Order 12044*
F. *National Environmental Policy Act*

*I. Introduction*

The allocation of crude oil and refined petroleum products for use by DOD has been accorded the highest priority designation in the ERA's petroleum allocation regulations. Thus, section 211.26 of the petroleum allocation regulations provides that the DOE is entitled to receive current requirments for crude oil and allocated products for all uses (except housekeeping requirements) without regard to the allocation fractions which DOD's suppliers establish for their non-priority customers. Recently, the President recommended that DOE, working in consultation with DOD, consider changing DOD's allocation level for motor gasoline for nonessential uses to ensure that DOE would receive its current requirements for this product only for direct, essential military- and readiness-oriented operations.

Based on our discussions with DOD, we believe that changing DOD's allocation level for non-essential uses is appropriate not only for motor gasoline, but for all other covered products and crude oil as well. In recent years, DOD has pursued stringent conservation measures with respect to its consumption of petroleum products, particularly automotive fuels for non-essential uses. As a result of these efforts, DOD has reduced significantly its petroleum consumption for such uses. For example, in California alone DOD reduced its consumption of motor gasoline by 41.5 percent from 1975 to 1978, a period during which total state consumption increased by 14.1 percent.

In light of DOD's conservation program, changing DOD's allocation level for non-essential uses is not likely to increase appreciably petroleum supplies available for the general public. However, since this action will make the allocation regulations consistent with DOD"s current practices regarding petroleum consumption for non-essential uses, we have determined to amend section 211.26 effective immediately.

We recognize that the national interest requires that adequate supplies of petroleum products for defense uses be available at all times. However, ERA and DOD believe that the amendment adopted today will not in any way impair DOD's mission capabilities or endanger national security.

*II. Amendment Adopted*

We are implementing this action by revising section 211.26(a) of the petroleum allocation regulations to provide that DOD will be entitled to receive its current requirements for petroleum, without being subject to an allocation fraction, only for essential military and readiness-oriented operations. All other DOD activities will be supplied at the appropriate allocation level specified in the various petroleum product subparts of Part 211 for the particular use involved.

*III. Procedural Requirements*

A. *Section 553(b) of the Administrative Procedure Act and Section 501 of the DOE Act.* Section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*, APA) requires that general notice of proposed rulemaking shall be published in the **Federal Register** unless persons subject to it are named and have actual notice of the proposal. Except when notice or hearing is required by statute, the requirement for a notice of proposed rulemaking does not apply when the agency finds (and incorporates the finding and a brief statement of its reasons) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest. For the reasons set forth in the "Introduction" section of this preamble and, in particular, the fact that implementation of this amendment is not likely to affect significantly the currently available supply of allocated products, we find that the section 553(b) requirements are unnecessary in this rulemaking proceeding.

In view of our determination that the requirements of APA section 553(b) are inapplicable, the prior notice requirement of subsection (b) of section 501 of the Department of Energy Organization Act (42 U.S.C. § 7101 *et seq.*, Pub. L. 95–91, DOE Act) also is inapplicable.

We also have determined, for the reasons stated above in support of waiving the APA section 553(b) requirements, that no substantial issue of law or fact exists with respect to this rulemaking and that the rulemaking is unlikely to have substantial impact on the nation's economy or large numbers of individuals or businesses. Accordingly, the hearing requirements of subsections (c) and (d) of section 501 of the DOE Act are inapplicable.

B. *Section 404 of the DOE Act.* Section 404(a) of the DOE Act requires that the Federal Energy Regulatory Commission (FERC) be notified whenever the Secretary of Energy proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of functions transferred to him under section 301 or section 306 of the DOE Act. If the FERC determines, within such period as the Secretary may precribe, that the proposed action may significantly affect any of its functions under sections 402(a)(1) or (b) of the DOE Act, the Secretary shall immediately refer the matter to the FERC.

Following an opportunity to review this rulemaking, the FERC has declined to determine that it may significantly affect one of its functions under the sections noted above.

C. *Section 7 of the FEA Act.* As required by section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. § 787 *et seq.*, Pub. L. 93–275, as amended), the requirements of which remain in effect under section 501(a) of the DOE Act, a copy of this rulemaking was submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of the rulemaking on the qualify of the environment. The Administrator had no comments.

D. *Section 553(d) of the Administrative Procedure Act.* Section 553(d) of the Administrative Procedure Act requires that a substantive rule not become effective less than thirty days after its publication unless the agency promulgating the rule finds good cause to waive this requirement and publishes this finding together with the rule. Since the purpose of this amendment to the DOD allocation levels is to insure that DOE receives its current requirements for petroleum products only for essential military- and readiness-oriented operations, we believe that it is in the public interest that the amendment be made effective immediately.

E. *Executive Order 12044.* In accordance with the DOE's criteria governing "significant regulations" set forth in paragraph 6(a)(3) of DOE Order 2030 (44 FR 1032, January 3, 1979), we have determined that the regulation set forth at the end of this preamble is not a significant regulation. Accordingly, the sixty-day advance public comment period and other rulemaking requirements specified in Executive Order 12044, entitled "Improving Government Regulations" (43 FR 12661, March 23, 1978), and DOE's implementing procedures, DOE Order 2030, are inapplicable.

F. *National Environmental Policy Act.* It has been determined that this final rule does not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and therefore an environmental assessment or an environmental impact statement is not required by NEPA and the applicable DOE regulations for compliance with NEPA.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94–163, as amended, Pub. L. 94–385, and Pub. L. 95–70; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95–91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 211 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective immediately.

Issued in Washington, D.C., June 4, 1979.

**David J. Bardin,**

*Administrator, Economic Regulatory Administration.*

Section 211.26 is amended by revising paragraph (a) to read as follows:

**§ 211.26 Department of Defense allocations.**

(a) Allocations of crude oil or any allocated product to the Department of Defense (except for requirements not related to essential military- and readiness-oriented operations) shall be supplied at an allocation level of one hundred (100) percent of current requirements without being subject to an allocation fraction.

* * * * *

[FR Doc. 79-17729 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

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**10 CFR Part 212**

**[Docket No. ERA-R-79-8]**

## Mandatory Petroleum Price Regulations; Retailers—Deletion of DOE Octane Posting Requirements

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Final Rule.

**SUMMARY:** The Economic Regulatory Administration of the Department of Energy hereby amends the octane posting provisions of the Mandatory Petroleum Price Regulations. Under the amendments issued today the DOE octane posting requirements will be deleted on June 1, 1979, the effective date of the more comprehensive Federal Trade Commission octane posting regulations adopted pursuant to the Petroleum Marketing Practices Act. The DOE regulations which require the posting of maximum lawful selling prices on the pump by gasoline retailers will be retained.

**DATES:** Effective June 1, 1979.

**FOR FURTHER INFORMATION CONTACT:**

William Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, NW., Room B-110, Washington, D.C. 20461 (202) 634-2170.

Lloyd Costley (Office of Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street, NW., Room 2314, Washington, D.C. 20461 (202) 254-8034.

William Mayo Lee (Office of General Counsel), Department of Energy, 1000 Independence Avenue, SW., Room 6A-127, Washington, D.C. 20585 (202-252-6754).

**SUPPLEMENTARY INFORMATION:**

I. *Background.*
II. *Amendments Adopted.*
III. *Other Matters.*

### I. Background

Section 212.129(b) of the DOE Mandatory Petroleum Price Regulations requires that retail gasoline dealers post in a prominent place on the face of each pump and in numbers at least one-half inch high, the octane rating and maximum lawful selling price of each grade of gasoline dispensed from that pump. The price and octane posting requirement was orginally adopted by the Cost of Living Council (CLC), a predecessor agency of the DOE, effective September 8, 1973 as part of the Phase IV petroleum price regulations. (See 38 FR 22536, August 22, 1973 and 38 FR 24214, September 6, 1973). An extension to November 21, 1973 to acquire the stickers and post the price and octane rating was later granted. (See 39 FR 1961, January 15, 1974). The requirement was reviewed and continued by the Federal Energy Administration with two modifications: dealers are to use their own labels rather than the uniform labels issued by the CLC and distributed through Post Offices, and the octane rating is to be determined only by the (R + M)/2 method. (40 FR 6323, February 11, 1975).

The original purpose of the price and octane posting requirement was to establish a regulatory relationship between the price and octane quality of the gasoline. For example, any reduction in the octane rating without a corresponding change in price would be a violation of the price regulations. It was also felt that octane posting would result in substantial savings to the consumer in that many motorists would avoid purchasing more expensive higher octane fuel than their vehicles require. The primary purpose of the price posting requirement was to advise the consumer of the federal price ceiling for that grade of gasoline at that station, and to help enlist the consumer as an enforcement agent.

On June 19, 1978, the Petroleum Marketing Practices Act (PMPA Pub. L. 95–297) was enacted. Title II of the PMPA entitled "Octane Disclosure," requires in part that the Federal Trade Commission (FTC) issue regulations which provide "uniform methods for the certification and posting of octane ratings by industry members." On September 19, 1978, the FTC issued its Notice of Proposed Rulemaking and Public Hearing concerning the certification and posting of octane ratings (43 FR 43028, September 22, 1978).

In order to avoid duplication and conflict in federal octane posting requirements, the DOE, on February 16, 1979, issued a Notice of Proposed Rulemaking and Public Hearing concerning the DOE octane posting regulations. (44 FR 11237, February 28, 1979). The Notice proposed to delete the DOE octane posting requirements effective on the effective date of the FTC regulations. The Notice also requested comment on whether the DOE price posting regulations should be modified or deleted.

While there was insufficient response to the request for oral comments to hold a public hearing, twenty-six written

comments were received. Comments were received from 12 private citizens, 12 major oil companies, the Broward County (Florida) Board of Commissioners and the Illinois Department of Agriculture. Of the 12 private citizens commenting, 11 favored a federal requirement (FTC or DOE) of octane posting and price posting; one citizen favored eliminating posting but requiring the dealer to make the information available on request. All of the 12 major oil companies favored deletion of the DOE octane posting requirement to avoid duplication with the FTC rules. With respect to price posting, seven of the major oil companies favored deletion of the DOE requirement, three favored retention of the rule and two suggested, in lieu of price posting on the pump, a requirement that dealers post a general certification that all of the gasoline prices at the station are at or below the DOE maximum lawful selling price. The Broward County Board of Commissioners commented that the posting requirements (DOE or FTC) should be publicized sufficiently for the public to assist the government in obtaining enforcement. The Illinois Department of Agriculture commented on the necessity of octane posting because of the reduced performance of some vehicles on lower octane gasolines.

The Environmental Protection Agency submitted the following comments:

"We have no objections to eliminating the octane posting requirement given proposed Federal Trade Commission action under the Petroleum Marketing Practices Act. We would expect, of course, that the DOE requirement would not be revoked until the FTC rule becomes effective. However, we believe the requirement of posting maximum lawful selling prices should be retained and enforced. Enforcement of the price posting regulation could reduce excessive unleaded gasoline prices that stem from pricing violations. This, in turn, could help prevent excessive unleaded/leaded price differentials and thus assist in reducing fuel switching (use of leaded gasoline in vehicles requiring unleaded gasoline) caused by those excessive differentials. This point was made in DOE's Final Environmental Impact Statement on Motor Gasoline Deregulation (FEIS at V-3)."

## II. Amendments Adopted

The DOE has determined that it is appropriate to delete the octane posting requirements in § 212.129(b) but to retain the price posting requirement.

In our February 16, 1979 Notice regarding the octane posting rules, we proposed to delete our requirement effective on the effective date of the FTC regulations which at that time, had not been established. On March 29, 1979 the FTC issued its final regulations regarding the certification and posting of octane ratings to be effective June 1, 1979. (44 FR 19160, March 30, 1979). Accordingly, under these amendments, the DOE octane posting requirement is deleted effective June 1, 1979.

The DOE has determined that none of the substantive provisions of the FTC rules regarding octane certification and posting are inconsistent with the objectives of the DOE rules. The FTC regulations will require octane posting in larger numbers than the DOE requirement and will use the same method for determining the octane rating: (R+M)/2.

With respect to the price posting requirement, we have determined that because of the current upward pressure on gasoline prices, caused by reduced allocations in some areas and other factors, it is in the best interest of the consumer to be able to compare the high prices being paid for gasoline with the posted DOE maximum lawful selling prices. We also believe that the price posting serves as a reminder to the dealer of the legal requirement to calculate the selling price pursuant to Section 212.93 of the DOE Mandatory Petroleum Price Regulations. It should be noted that the posting requirement in this section is in addition to posting the selling price which is normally displayed on the retail pump.

## III. Other Matters

Section 553(d) of the Administrative Procedure Act requires that a substantive rule not become effective less than thirty days after its publication unless the agency promulgating the rule finds good cause to waive this requirement and publishes this finding together with the rule. We have determined that good cause is found to waive the Section 553(d) requirement and adopt this rule effective June 1, 1979 in order to aviod an overlap in the DOE and the FTC octane posting requirements.

In accordance with Section 404 of the DOE Act, the Federal Energy Regulatory Commission received a copy of the proposed rulemaking and has notified ERA that it has determined that the proposed regulations would not significantly affect any function within its jurisdiction under Section 402(a)(1), (b), and (c)(1) of the DOE Act.

On the basis of criteria in Executive Order No. 12044 and the DOE implementing procedures, we do not believe this rule will have a substantial impact on the economy. Therefore, we have determined this is not a significant regulation and no regulatory analysis pursuant to that Executive Order is required.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 212 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective immediately.

Issued in Washington, D.C., June 1, 1979.

**Richard B. Herzog,**

*Acting Administrator, Economic Regulatory Administration.*

Section 212.129 is amended by revising paragraph (b) to read as follows:

**§ 212.129 Price information and posting.**

* * * * *

(b) Each retail seller of gasoline shall post and maintain in legible form, in numbers of a conspicuous size (not less than one-half (½) inch high), and in a prominent place on each face of each pump used to dispense gasoline in retail sales, the maximum permissible price allowed to be charged pursuant to Subparts E or F of this part for such product. The posting of the actual selling price is not considered to be the posting of the maximum permissible price as required by this section. Whenever an adjustment is made to the maximum permissible price, each seller must post the new adjusted maximum permissible price, and remove the prior posted price.

[FR Doc. 79-17725 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

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## FEDERAL RESERVE SYSTEM

## 12 CFR Part 217

**[Regulation Q; Docket No. R-0215]**

## Interest on Deposits; Early Withdrawal Penalty and Maximum Rates of Interest

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** On April 3, 1979, the Board of Governors of the Federal Reserve System invited public comment of

proposals to amend Regulation Q to provide additional returns to savers (44 FR 21023).

The period for receipt of public comment on the proposed amendments expired on May 5, 1979. After consideration of the comments submitted and the views expressed therein, the Board has determined to take the following actions:

(1) Creation of a new time deposit category with a maturity of 4 years or more and no required minimum denomination.

(2) Elimination of the $1,000 minimum denomination requirements currently imposed on certain time deposits by Regulation Q. (The $10,000 minimum denomination requirement on the 26-week money market time deposit, however, is retained.)

(3) Modification of the interest forfeiture penalty required to be imposed when funds are withdrawn from time deposits prior to maturity.

(4) Increase the ceiling rate of interest payable on savings deposits by member banks from five percent to five and one-quarter percent.

**EFFECTIVE DATE:** July 1, 1979.

**FOR FURTHER INFORMATION CONTACT:** Gilbert T. Schwartz, Assistant General Counsel (202/452–3623) or Anthony F. Cole, Senior Attorney (202/452–3711), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:** In response to notice published in the **Federal Register** (44 FR 21023), the Board has received and reviewed over 900 comments on its proposals to provide additional returns to savers. A majority of those responding generally favored action to provide savers with higher rates of return but opposed certain operational aspects of the proposals as unnecessarily complex, costly to administer and difficult for member banks and depositors to understand. With reference to the specific proposals, a majority of respondents commenting favored adoption of the proposed 5-year time deposit. The proposed six-month interest forfeiture penalty for early withdrawals and application of such a penalty to all time deposits also were favored by a majority of respondents. A substantial number of respondents commented that a maturity shorter than five years for the proposed instrument was preferable. A majority of respondents commenting opposed adoption of the proposed 8-year rising rate time deposit and the bonus savings proposal. The respondents generally commented that these two proposals would create costly operational problems and would be confusing to customers. Reduction of the minimum denomination requirements currently imposed on certain time deposits under Regulation Q (12 CFR 217.7) from $1,000 to $500 was favored by a majority of respondents commenting. In addition, a substantial number of respondents favored totally eliminating the minimum denomination requirements for all certificates of deposit, other than the 26-week money market certificate. A detailed summary of comments received is available upon request from the Board's Office of Public Affairs, telephone (202) 452–3215.

After consideration of the comments received, the Board has determined not to adopt the proposals to create an 8-year rising rate time deposit and to authorize the payment of an interest bonus on savings funds. The Board, however, has determined to amend Regulation Q (12 CFR 217) to: (1) create a new time depoist category with a maturity of 4 years or more and with a maximum ceiling rate of interest based on the average 4-year yield on Treasury securities; (2) eliminate the $1,000 minimum denomination requirements currently imposed on certain time deposits; (3) modify the penalty required to be imposed upon the withdrawal of funds from time deposits prior to maturity; and (4) increase the ceiling rate of interest payable on savings deposits to five and one-quarter percent. The Board believes that these amendments will enable individuals to obtain higher rates of return on their savings without adversely affecting the viability of the nation's financial system. A discussion of the amendments adopted follows.

I. *Four-year fixed rate, variable ceiling time deposit*

Beginning July 1, 1979, member banks will be permitted to offer a nonnegotiable time deposit with a maturity of 4 years or more at a ceiling rate tied to the average 4-year yield on United States Treasury securities. The ceiling rate will be the same even if a member bank issues the new time deposit with maturities in excess of four years. Although no minimum denomination will be required, member banks are free to establish a minimum denomination requirement for this new category of deposit. The existing fixed ceiling time deposits with maturities of 4, 6 and 8 years at ceiling rates of 7¼, 7½ and 8 per cent, respectively, are not affected by this action and will remain in effect.

The ceiling rate on the new deposit category will be established each month for new deposits received during that month at one and one-quarter per cent below the average 4-year yield for United States Treasury securities as determined by the U.S. Treasury Department. Beginning the first day of every month, a member bank will be permitted to pay interest at a ceiling rate of one and one-quarter per cent below the average 4-year yield as announced by the Treasury. This ceiling rate will remain in effect for all instruments issued during the month until the first day of the next month when a new ceiling rate will go into effect for instruments issued on or after that date. The ceiling rate of interest established at the time of issue of any time deposit in this category will not change during the period the deposit is outstanding. Member banks are permitted to compound and compute interest on this deposit in accordance with any of the methods authorized by section 217.3 of Regulation Q. The average 4-year yield will be announced three business days prior to the effective date (the first day of the month) and will represent an average of the 4-year yields for the previous five business days. As explained more fully hereinafter, the minimum penalty required to be imposed upon the withdrawal of funds from this category of time deposit is a forfeiture of six months interest at the rate being paid on the deposit.

With respect to this new deposit category, member banks should maintain data such as rates paid and amounts issued in a manner that facilitates reporting to the Board.

II. *Elimination of minimum denomination requirements*

Effective July 1, 1979, the Board has amended Regulation Q to eliminate the $1,000 minimum denomination requirements currently imposed on time deposits with maturities of 4 years or more in order to earn interest at a ceiling rate of 7¼ per cent or more (12 CFR 217.7(b)(2), (3), and (4)). Although no minimum denomination will be required on such deposits, member banks will be free to impose such requirements. However, the $10,000 minimum denomination required on 26-week money market time deposits by section 217.7(f) of Regulation Q (12 CFR 217.7(f)) will remain in effect. The Board believes that this action will broaden the availability of time deposit categories to all depositors and enable small savers to obtain higher yields on their funds.

III. *Penalty for early withdrawals*

Regulation Q currently provides that where a member bank agrees to pay a time deposit prior to maturity, the bank must impose an early withdrawal penalty on the funds withdrawn (12 CFR 217.4(d)). The current minimum required penalty is a reduction in the rate of interest paid on the funds withdrawn to a rate not to exceed the rate currently prescribed for a savings deposit (5 per cent) plus a forfeiture of three months interest at such rate. Under the current structure, the amount of the early withdrawal penalty increases significantly the longer the deposit is maintained. In order to reduce the severity of this penalty, the Board has amended section 217.4(d) of Regulation Q (12 CFR 217.4(d)) to create a new early withdrawal penalty.

Effective July 1, 1979, the minimum required early withdrawal penalty on time deposits with original maturities of one year or less is a forfeiture of three months interest on the amount withdrawn at the rate being paid on the deposit. If the amount withdrawn has been on deposit for less than three months, however, all interest is forfeited. The minimum required early withdrawal penalty on time deposits with original maturities of more than one year is a forfeiture of six months interest on the amount withdrawn at the rate being paid on the deposit. If the amount withdrawn has been on deposit for less than six months, however, all interest is forfeited. No reduction of interest to the savings rate will be required. This penalty will apply to all time deposit contracts entered into on or after July 1, 1979, and to all existing time deposit contracts that are extended or reviewed on or after July 1, 1979. The new penalty is a minimum required penalty only and a member bank is free to specify in its deposit contract a more severe premature withdrawal penalty as long as such penalty is disclosed to the depositor. Time deposits entered into before July 1, 1979, and not extended or renewed on or after such date, will continue to be subject to the Board's current penalty rule which requires a reduction of the rate of interest paid on the funds withdrawn before maturity to the savings rate, less three months interest at that rate.

*IV. Ceiling Rate on Savings Deposits*

Regulation Q currently provides that no member bank shall pay interest on any savings deposit at a rate in excess of 5 per cent (12 CFR 217.7(c)). Effective July 1, 1979, the Board has amended Regulation Q to increase the ceiling rate of interest payable on savings deposits by member banks, except savings deposits that are subject to negotiable orders of withdrawal, from 5 per cent to 5¼ per cent. This action is being taken in lieu of the proposal to authorize member banks to pay an interest bonus on savings funds held by individuals or certain nonprofit organizations and will provide higher returns to savers. The ceiling rate of interest payable by member banks on savings deposits subject to negotiable orders of withdrawal will remain at 5 per cent.

Pursuant to its authority under section 19(j) of the Federal Reserve Act (12 U.S.C. § 371b) to prescribe rules governing the payment of interest on deposits, effective July 1, 1979, the Board amends Regulation Q (12 CFR §§ 217.4, 217.6, and 217.7) as follows:

(1) Amend § 217.4 (d) and (e) to read as follows:

**§ 217.4 Payment of the time deposits before maturity.**

* * * * *

(d) *Penalty for early withdrawals.* Where a time deposit with an original maturity of one year or less, or any portion thereof, is paid before maturity, a depositor shall forfeit at least three months of interest on the amount withdrawn at the rate being paid on the deposit. If the amount withdrawn has remained on deposit for less than three months, all interest shall be forfeited. Where a time deposit with an original maturity of more than one year, or any portion thereof, is paid before maturity, a depositor shall forfeit at least six months interest on the amount withdrawn at the rate being paid on the deposit. If the amount has remained on deposit for less than six months, all interest shall be forfeited.[11] Where necessary to comply with the requirements of this paragraph, any interest already paid to or for the account of the depositor shall be deducted from the amount requested to be withdrawn. Any amendment of a time deposit contract that results in an increase in the rate of interest paid or in a reduction in the maturity of the deposit constitutes a payment of the time deposit before maturity. A time deposit may be paid before maturity without a forfeiture of interest as prescribed by this paragraph in the following circumstances: * * *

(e) *Disclosure of early withdrawal penalty.* At the time a depositor enters into a time deposit contract with a member bank, the bank shall provide a written statement of the effect of the penalty prescribed in paragraph (d) of this section, which shall (1) state clearly that the customer has contracted to keep his funds on deposit for the stated maturity and (2) describe fully and clearly how such penalty provisions apply to time deposits in such bank, in the event the bank, notwithstanding the contract provisions, permits payment before maturity. Such statements shall be expressly called to the attention of the customer.

* * * * *

(2) Amend § 217.6(e) to read as follows:

**§ 217.6 Advertising of interest on deposits.**

* * * * *

(e) *Penalty for early withdrawals.* Any advertisement, announcement, or solicitation relating to interest paid by a member bank on time deposits shall include clear and conspicuous notice that the bank is prohibited from allowing payment of a time deposit before maturity unless substantial interest is forfeited. Such notice may state that,

"Substantial interest penalty is required for early withdrawal."

* * * * *

(3) Amend § 217.7 as follows:

**§ 217.7 Maximum rates of interest payable by member banks on time and savings deposits.**

* * * * *

(b) *Fixed ceiling time deposits of less than $100,000.* Except as provided in paragrphs (a), (d), (e), (f), and (g), no member bank shall pay interest on any time deposit at a rate in excess of the applicable rate under the following schedule:

| Maturity | Maximum percent |
|---|---|
| 30 days or more but less than 90 days | 5 |
| 90 days or more but less than 1 year | 5½ |
| 1 year or more but less than 30 months | 6 |
| 30 months or more but less than 4 years | 6½ |
| 4 years or more but less than 6 years | 7¼ |
| 6 years or more but less than 8 years | 7½ |
| 8 years or more | 7¾ |

(c) *Savings deposits.* No member bank shall pay interest at a rate in excess of 5¼ per cent on any savings deposit. Provided, however, that no member

[11] The provisions of this paragraph apply to all time deposit contracts entered into on or after July 1, 1979, and to all existing time deposit contracts that are extended or renewed (whether by automatic renewal or otherwise) on or after such date. All contracts not subject to the provisions of this paragraph shall be subject to the restrictions of § 217.4(d) in effect prior to July 1, 1979, which provided that where a time deposit, or any portion thereof, is paid before maturity, a member bank may pay interest on the amount withdrawn at a rate not to exceed that prescribed in § 217.7 for a savings deposit and the depositor shall forfeit three months of interest payable at such rate. If, however, the amount withdrawn has remained on deposit for three months or less, all interest shall be forfeited.

bank shall pay interest at a rate in excess of 5 per cent on any savings deposit that is subject to negotiable orders of withdrawal, the issuance of which is authorized by Federal law.

(d) *Governmental unit time deposits of less than $100,000.* Except as provided in paragraphs (a), (f), and (g), no member bank shall pay interest on any time deposit which consists of funds deposited to the credit of, or in which the entire beneficial interest is held by, the United States, any State of the United States, or any county, municipality or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or political subdivision thereof, at a rate in excess of 8 per cent.[2]

(e) *Individual Retirement Account and Keogh (H.R. 10) Plan deposits of less than $100,000.* Except as provided in paragraphs (a) and (g), a member bank may pay interest on any time deposit with a maturity of three years or more that consists of funds deposited to the credit of, or in which the entire beneficial interest is held by, an individual pursuant to an Individual Retirement Account agreement or Keogh (H.R. 10) Plan established pursuant to 26 U.S.C. (I.R.C. 1954) §§ 408, 401, at a rate not in excess of 8 per cent.[2]

(f) *26-week money market time deposits of less than $100,000.* Except as provided in paragraph (a), a member bank may pay interest on any nonnegotiable time deposit of $10,000 or more, with a maturity of 26 weeks, at a rate not to exceed the rate established (auction average on a discount basis) for United States Treasury bills with maturities of 26 weeks issued on or immediately prior to the date of deposit. Rounding such rate to the next higher rate is not permitted. A member bank may not compound interest during the term of this deposit. A member bank may offer this category of time deposit to all depositors.

(g) *Time deposits of less than $100,000 with maturities of four years or more.* Except as provided in paragraphs (a) and (b), a member bank may pay interest on any nonnegotiable time deposit with a maturity of four years or more that is issued on or after the first day of every month at a rate not to exceed one and one-quarter per cent below the average 4-year yield for United States Treasury securities as determined and announced by the United States Department of the Treasury three business days prior to the first day of such month. The average 4-year yield will be rounded by the United States Department of the Treasury to the nearest 5 basis points. A member bank may offer this category of time deposit to all depositors.

By order of the Board of Governors, May 30, 1979.

**Theodore E. Allison,**

*Secretary of the Board.*

[FR Doc. 79-17667 Filed 6-6-79; 8:45 am]

BILLING CODE 6210-01-M

[2] The ceiling rate on this category is the highest fixed ceiling rate that may be paid on time deposits under $100,000 by any Federally insured commercial bank, mutual savings bank, or savings and loan association.

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 303

### Remote Service Facility Procedures; Correction

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a final rule relating to remote service facility procedures published at 44 FR 17995, March 26, 1979.

**FOR FURTHER INFORMATION CONTACT:** Roger A. Hood, Assistant General Counsel, Federal Deposit Insurance Corporation, Washington, D.C. 20429, 202-389-4628.

**SUPPLEMENTARY INFORMATION:**

In FR Doc. 79-9132 appearing at page 17995 in the **Federal Register** of Monday, March 26, 1979, the following change should be made:

1. On page 17997, the second textual sentence of the paragraph concerning § 303.14(d)(1) is corrected by deleting the comma after the word "application" the second time the word appears and by adding the footnote number "13" at the end of the sentence. As corrected, the sentence reads:

In other cases, once the Corporation's field examiner has completed the investigation of an application subject to the provisions of this section, anyone who, within the 15-day period prescribed in paragraph (b)(2) of this section, filed a written notice of intent to protest the granting of the application shall be entitled to file a formal protest and request an opportunity to be heard so long as that person does so within 15 days after receipt of the notice set forth in paragraph (d)(2) of this section.[13]

Dated: May 30, 1979.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 79-17610 Filed 6-6-79; 8:45 am]

BILLING CODE 6714-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 79-WE-9-AD; Amdt. 39-3486]**

### Airworthiness Directives; AiResearch Model TPE 331-10-501G Engines

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to certain operators of AiResearch Model TPE 331-10-501G engines by priority message dated May 10, 1979. This AD was required because of a possibility of dual engine failure which could result in a complete loss of propulsive power.

**DATES:** Effective June 12, 1979, except with respect to certain persons specified in the body of the AD.

Compliance schedule—As prescribed in the body of the AD.

**FOR FURTHER INFORMATION CONTACT:** Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone (213) 536-6351.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority delegated by the Administrator, an AD was adopted on May 10, 1979 and made effective immdiately by telegram to certain known operators of AiResearch Model TPE 331-10-501G engines because of failures of the forged third stage turbine wheel, Part No. 3101516-1, installed in the Swearingen Merlin IIIB airplane.

Since it was found that immediate corrective action was required, notice and public procedure thereon was impracticable and contrary to the public interest and good cause existed, therefore, making the AD effective immediately as to certain operators of AiResearch Model TPE 331-10-501G engines. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of Part 39 of the Federal

Aviation Regulations to make it effective as to all persons.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

*AiResearch Manufacturing Company of Arizona:* Applies to all AiResearch Model TPE 331–10–501G engines incorporating the forged third stage turbine wheel, Part Number 3101516–1, installed in the Swearingen Merlin IIIB airplane.

Note.—The engine and airplane manufacturer's records indicate that the subject forged third stage turbine wheels, Part Number 3101516–1, are contained in the following serial numbered TPE 331–10–501G turboprop engines and are installed on the following Swearingen Merlin IIIB airplanes:

| Engine serial No. | Airplane serial No. | Airplane registration |
|---|---|---|
| P35003 | T292 | LVBHP (Argentina) |
| P35004 | T292 | |
| P35008 | T294 | N800TA (Teterbury Aviation, NJ) |
| P35010 | T294 | |
| P35009 | T295 | N4442F (Fairchild) |
| P35012 | T295 | |
| P35011 | T296 | VHSWK (Stilwell; in Australia) |
| P35013 | T296 | |
| P35017 | T298 | N5495M (Stilwell; in Australia) |
| P35019 | T298 | |
| P35014 | T297 | N5465M (Planes, Inc.; Atlanta, GA) |
| P35015 | T297 | |
| P35016 | T299 | N81CH (Duncan Aviation, NB) |
| P35020 | T299 | |
| P35022 | T300 | N29TA (Teterbury Aviation, NJ) |
| P35023 | T300 | |
| P35021 | T301 | N5652M (Western Airmotive, |
| P35024 | T301 | Hillsboro, OR) |
| P35025 | T302 | N5497M (Houston, TX) |
| P35026 | T302 | |
| P35007 | T293 | DIBB (Cologne, Germany) |
| P35018 | T276 | N5111B (Philadelphia) |

Compliance required as indicated.

To reduce the possible hazard from the total loss of power of one or more engines during a single flight resulting from the failure of the forged third stage turbine wheel blade, accomplish the following.

(a) Within the next 10 operating hours time in service after May 10, 1979, on at least one of the affected TPE 331–10–501G engines on each affected airplane, unless already accomplished, remove the forged third stage turbine wheel, Part Number 3101516–1, and replace it with a cast third stage turbine wheel, Part Number 3102655–1, in accordance with existing maintenance instructions.

Note.—Suitable instructions may be found in TPE 331–10 Engine Maintenance Manual, AiResearch Part Number 72–00–23.

(b) Within the next 50 operating hours time in service after May 10, 1979, on all TPE 331–10–501G engines installed on the Merlin IIIB airplane, unless already accomplished, remove the forged third stage turbine wheel, Part Number 3101516–1, and replace it with a cast third stage turbine wheel, Part Number 3102655–1, in accordance with instructions referenced in Paragraph (a) of this airworthiness directive.

(c) Alternative actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

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

(e) Upon request of operator, an FAA maintenance inspector, subject to prior approval of the Chief, Aircraft Engineering Division, FAA Western Region may adjust the initial and repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

This amendment becomes effective upon publication in the **Federal Register** as to all persons except those persons to whom it was made immediately effective by telegram dated May 10, 1979, which contains this amendment.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89).

Issued in Los Angeles, California on May 25, 1979.

**Leon C. Daugherty,**

*Director, FAA Western Region.*

[FR Doc. 79–17478 Filed 6–6–79; 8:45 am]

BILLING CODE 4910–13–M

## 14 CFR Part 39

**[Airworthiness Docket No. 74–WE–34–AD; Amdt. 39–3487]**

## Airworthiness Directives; McDonnell Douglas DC–9 Airplanes

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment amends an existing airworthiness directive (AD) applicable to McDonnell Douglas DC–9 airplanes equipped with welded engine aft isolator mounts by extending the repetitive inspection interval to 850 hours. The amendment is needed to allow inspection at a scheduled inspection interval of the DC–9 operator.

**DATES:** Effective June 12, 1979. Compliance schedule—As prescribed in the body of the AD.

**ADDRESSES:** The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attn: L. A. Eisenberg, C1–750, 54–60.

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591, or

Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

**FOR FURTHER INFORMATION CONTACT:** Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536–6351.

**SUPPLEMENTARY INFORMATION:** This amendment amends Amendment 39–1995, AD 74–22–01, which currently requires a repetitive inspection interval of 750 hours time-in-service of all welded engine aft isolator mounts on McDonnell Douglas DC–9 airplanes. Since issuing Amendment 39–1995, the FAA has determined that the repetitive inspection interval should be increased to 850 hours time-in-service to allow DC–9 operators to perform the inspection at an established inspection period for their fleet. Such a change will allow inspection at the main maintenance base by personnel most familiar with the non-destructive techniques required, thus ensuring more reliable results than would likely be the case of field inspections.

Since this amendment relieves a restriction and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and good cause exists for making the amendment effective in less than 30 days.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39–1995, AD 74–22–01 to read in pertinent part as follows;

**§ 39.13 Airworthiness Directives.**

* * * * *

* * * "and thereafter at intervals not to exceed 850 hours' time-in-service, inspect the aft engine mount" * * *

* * * * *

This amendment becomes effective June 12, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89.)

The Federal Aviation Administration has determined that this document is not significant in accordance with the criteria required by Executive Order 12044 and set forth in interim Department of Transportation Guidelines.

Issued in Los Angeles, California on May 25, 1979.

**Leon C. Daugherty,**

*Director, FAA Western Region.*

[FR Doc. 79-17477 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-13-M

## METRIC BOARD

## 15 CFR Part 501

## Procedures for Availability of Information Under the Freedom of Information Act

**AGENCY:** United States Metric Board.

**ACTION:** Final Rule.

**SUMMARY:** The United States Metric Board adopts procedures for its operations in order to implement the Freedom of Information Act. Such procedures shall afford maximum access for the public to information regarding the activity of the United States Metric Board.

**EFFECTIVE DATE:** June 7, 1979.

**FOR FURTHER INFORMATION CONTACT:** John Milo Bryant, Office of General Counsel, 1815 North Lynn Street, Suite 600, Arlington, VA 22209, 703-235-1933.

**SUPPLEMENTARY INFORMATION:** On Thursday, March 8, 1979 there was published in the **Federal Register** (44 FR 12690) a notice of proposed rule making by the United States Metric Board which would amend Title 15, Chapter V by adding Part 501.

The public was afforded a 30-day period in which to submit written comments, data, and views on the proposal. No comments of any kind were received during that period.

Accordingly, under the authority of 5 USC 552(g) the USMB hereby adopts the Procedures for Availability of Information Under The Freedom of Information Act (15 CFR Part 501) as appearing in the **Federal Register** on March 8, 1979 (44 FR 12690), effective June 7, 1979.

Dated at Arlington, Virginia this 31 day of May 1979.

For United States Metric Board.

**Malcolm E. O'Hagan,**

*Executive Director.*

Title 15, Chapter V of the Code of Federal Regulations is amended by adding Part 501 to read as follows:

Sec.

501.1 Organization and authority—United States Metric Board.
501.2 Statement of policy.
501.3 Material to be published in the Federal Register.
501.4 Effect of non-publication.
501.5 Incorporation by reference.
501.6 Records generally available.
501.7 Current index.
501.8 Additional documents and records generally available for inspection and copying.
501.9 Exemptions.
501.10 Procedures for obtaining records.
501.11 Actions on requests.
501.12 Appeal.
501.13 Fees for services.

Authority: 5 U.S.C. 552.

### § 501.1 Organization and authority—United States Metric Board.

(a) The United States Metric Board is an independent agency of the Federal Government created by the Metric Conversion Act of 1975 (P.L. 94-168, 15 USC 205a-205k), hereinafter referred to as the Act.

(b) Section 3 of the Act states "that the policy of the United States shall be to coordinate and plan the increasing use of the metric system in the Untied States and to establish a United States Metric Board to coordinate the voluntary conversion to the metric system". In implementing the policy the Board has the responsibility to devise and carry out a broad program of planning, coordination, and public education.

(c) The Board consists of a Chairman and sixteen members appointed by the President with the advice and consent of the Senate to serve for six-year terms of office with the exception of the first appointees. The terms of office of the members of the Board first taking office shall expire as designated by the President at the time of nomination; five at the end of the 2nd year; five at the end of the 4th year and six at the end of the sixth year. The term of office of the Chairman of the Board will be six years.

### § 501.2 Statement of policy.

United States Metric Board records and informational materials are available to the fullest extent possible consistent with 5 U.S.C. section 552, as amended, and will be promptly furnished to any member of the public.

### § 501.3 Material to be published in the Federal Register.

The Board will separately state and concurrently publish the following materials in the **Federal Register** for the guidance of the public:

(a) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(b) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, and examinations.

(c) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.

(d) Every amendment, revision, or repeal of the foregoing.

### § 501.4 Effect of non-publication.

Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by, any matter required to be published in the **Federal Register** and not so published.

### § 501.5 Incorporation by reference.

For purposes of this part, matter which is reasonably available to the class of person affected thereby shall be deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register.

### § 501.6 Records generally available.

The Board will make promptly available to any member of the public the following documents:

(a) Proposed and Final Decisions (including dissenting opinions and all orders made with respect thereto);

(b) Statements of policy and interpretations which have been adopted by the Board which have been published in the **Federal Register**; and

(c) A current index, which shall be updated at least quarterly covering the foregoing material adopted, issued or promulgated after July 1, 1978. Publication of an index is deemed both impractical and unnecessary. However, copies of the index are available upon request for a fee of the direct cost of duplication.

**§ 501.7 Current index.**

This Board shall maintain and make available for public inspection and copying, current indices providing identifying information for the public as to any matter issued, adopted, or promulgated after July 1, 1978, as required to be indexed by 5 U.S.C. 552(a)(2).

**§ 501.8 Additional documents and records generally available for inspection and copying.**

The following kinds of documents are also available for inspection and copying at the Offices of the Board:

(a) Rules of practice and procedure.

(b) Annual report of the Board to the Congress of the United States and the President of the United States.

(c) Bound volumes of Board decisions.

(d) The Metric Act of 1975 and related Acts.

(e) Press releases and other miscellaneous material concerning Board operations.

**§ 501.9 Exemptions.**

In the event any document or record requested shall contain material which is exempt from disclosure under this section, any reasonably segregable portion of that record shall be provided to any person requesting same, after deletion of the portions which are exempt under this section. Documents or records determined to be exempt from disclosure hereunder may nonetheless be provided upon request in the event it is determined that the provision of such document would not violate the public interest or the right of any person to whom such information may pertain, and the disclosure is not prohibited by law or Executive Order. The following categories or records are exempt from disclosure under the provision of 5 U.S.C. 552(b):

(a) Records specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. This exemption may apply to records in the custody of the Board which have been transmitted to the Board by another agency which has designated the record as nonpublic under Executive Order.

(b) Records related solely to the internal personnel rules and practices of the Board.

(c) Records specifically exempted from disclosure by statute.

(d) Information given in confidence. This includes information obtained by or given to the Board which constitutes confidential commercial or financial information, privileged information, or other information which was given to the Board in confidence or would not customarily be released by the person from whom it was obtained.

(e) Interagency or Intraagency memoranda or letters which would not be available by law to a private party in litigation with the Board. Such communications include interagency memoranda, drafts, staff memoranda transmitted to the Board, written communications between the Board, the Executive Director, and the General Counsel, regarding the preparation of Board decisions, other documents received or generated in the process of issuing a decision, or regulation, and reports and other work papers of staff attorneys, accountants, and investigators.

(f) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) Investigation files compiled for law enforcement purposes but only to the extent that the production of such records would—

(1) Interfere with information proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of criminal investigation, or by an agency conducting a lawful security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedure; or

(6) Endanger the life or physical safety of law enforcement personnel.

**§ 501.10 Procedures for obtaining records.**

(a) Each person desiring access to a record covered by this part must comply with the following provisions:

(1) A written request must be made for the record.

(2) Such request must indicate that it is being made under the Freedom of Information Act.

(3) The envelope in which the request is sent must be prominently marked with the letters "FOIA".

(4) The request must be addressed to the appropriate official or employee of the Board as set forth in paragraph (c) of this section.

(5) The foregoing requirements must be complied with whether the request is mailed or hand-delivered to the Board.

(b) If the requirements of paragraph (a) of the section are not met, the ten day time limit described in § 501.11 will not begin to run until the request has been identified by an official or employee of the Board as a request, under the Freedom of Information Act and has been received by the appropriate official or employee of the Board.

(c) Each person desiring access to a record covered in this Part that is located at the Board, or to obtain a copy of such a record must make a written request to Director, Office of Public Information, United States Metric Board, 1815 North Lynn Street, Suite 301, Arlington, VA 22209.

(d) Each request would reasonably describe the particular record requested. The request should specify the subject matter, the date when it was made and the person or office that made it. If the description is insufficient, the official or employee handling the request may notify the person making the request and to the extent possible, indicate the additional data required.

(e) Each record made availabale under this section is available for inspection and copying during regular working hours. Original documents may be copied but may not be released from custody.

(f) Authority to administer this Part in connection with Board records is delegated to the Director, Office of Public Information or Board employee acting in his or her stead.

**§ 501.11 Actions on requests.**

(a) The Director, Office of Public Information or any employee acting in his stead shall determine within ten days (excepting Saturdays, Sundays or legal public holidays) after the receipt of any such request, whether to comply with such request. Upon receipt of a request for a Board record which is available, the Director, Office of Public Information or any employee acting in his stead shall notify the requester as to the time the record is available, and shall promptly make the record available after advising such requester of the applicable fees under § 501.13. The person making such request shall be notified immediately after any adverse determination, the reasons for making such adverse determination and the right of such person to appeal.

(b) Any denial of a request for a record shall be written and signed by Director, Office of Public Information or Board employee acting in his or her

stead, including a statement for the reason of denial. Such statement shall contain, as applicable:

(1) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of a record, and to the extent consistent with the purpose of the exemption of how the exemption applies to the record withheld.

(2) If a record requested does not exist or has been legally disposed of, the requester shall be so notified.

(c) In unusual circumstances, the time prescribed in paragraph (a) may be extended by written notice to the person making such request setting forth the reasons for such extension and the data on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(1) The need to search for and collect the requested records from other establishments that are separate from the office processing the request;

(2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practical speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest herein.

(d) With respect to determinations on appeals, such determinations shall be made within twenty days (excepting Saturdays, Sundays, and holidays) after the receipt of such appeal. If, on appeal, the denial of the request for records is in whole or in part upheld, the Board shall notify the person making such request of the provisions for judicial review of that determination under section 552(a)(4) of Title 5 U.S.C.

**§ 501.12 Appeal.**

(a) Any person to whom a record has not been made available within the time limits established by paragraph (a) of § 501.11, and any person who has been given an adverse determination pursuant to paragraph (b) of § 501.11, that a record he or she has requested will not be disclosed, may apply to the General Counsel of the Board, for reconsideration of the request. A determination that a record will not be disclosed is not administratively final for the purpose of judicial review unless it was made by the General Counsel, unless the applicable time limit has passed without a determination of the appeal having been made.

(b) Each application for reconsideration must be made in writing within thirty days from the date of receipt of the original denial and must include all information and arguments relied upon by the person making the request. Such application must indicate that it is an appeal from a denial of a request made under the Freedom of Information Act. The envelope in which the application is sent must be prominently marked with the letters "FOIA". If these requirements are not met, twenty day time limit described in § 501.11(d) will not begin to run until the application has been identified by an employee of the Board as an application under the Freedom of Information Act and has been received by the appropriate office.

(c) Whenever the General Counsel determines it to be necessary, he or she may require the person making the request to furnish additional information, or proof of factual allegations, and may order other proceedings appropriate in the circumstances. The decision of the General Counsel as to the availability of the record is administratively final.

(d) The decision by the General Counsel not to disclose a record under this part is considered to be a withholding for the purposes of Section 552(a)(3) of Title 5, U.S.C.

**§ 501.13 Fees for services.**

Unless otherwise waived by paragraphs (d) and (e) of this section, the following fees shall be imposed for the reproduction of any record disclosed pursuant to this part.

(a) Copying of records and documents. Five cents per copy for each page.

(b) Search fees. (1) clerical searches. $6.00 for each hour spent by clerical personnel searching for and producing a requested record or document, including time spent copying any record. (2) $15.00 for each one hour spent by supervisory or professional personnel searching for and producing a requested record, including time spent copying any record.

(c) Certification and validation of records. $1.00 per certification or authentication.

(d) The General Counsel may reduce or waive payment of fees in whole or in part when he determines that such reduction or waiver is in the public interest because furnishing the information can be considered as primarily benefiting the general public, or unless the requester is a government agency or indigent.

(e) No fees will be charged (1) for time spent in examining the requested records for the purpose of determining whether an exemption can and should be asserted, (2) for time spent in deleting exempt matters being withheld from records to furnish, (3) for time spent monitoring a requester's inspection of agency records made available to him in this manner, or (4) for records not found or determined to be totally exempt from disclosure.

(f) Payment of fees under this part should be made to the Treasury of the United States.

(g) Unless the request for services where fees are chargeable under this part, specifically states that whatever cost is involved will be acceptable or acceptable up to a specified limit that covers anticipated costs, a request that is expected to involve assessed fees in excess of $50 will not be deemed to have been received until the requester is advised promptly at the time of receipt of request of the anticipated cost and agrees to bear it. When the anticipated fees exceed $50, a deposit of $25 must be made within ten working days of advising the requester of such costs.

[FR Doc. 79-17745 Filed 6-6-79; 8:45 am]

BILLING CODE 6820-94-M

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## DEPARTMENT OF STATE

## 22 CFR Part 41

[Departmental Regulation 108.778]

## Visa Issuance Procedures

**AGENCY:** State Department.

**ACTION:** Final rule.

**SUMMARY:** A new paragraph (l) concerning visa issuance procedures is added to § 41.124 to provide that the imprint of a rubber stamp seal of the issuing consular office and the signature of a consular officer affixed on an identity card, duly issued under the Olympic Rules Bylaws, shall constitute the issuance of a visa to certain aliens participating in the Summer or Winter Olympic Games, or the Pan American Games or other Regional Games to be held in the United States.

**EFFECTIVE DATE:** June 7, 1979.

**FOR FURTHER INFORMATION, CONTACT:** Cornelius D. Scully, Acting Director, Office of Legislation, Regulations and Advisory Assistance, Visa Services, Bureau of Consular Affairs, Department of State. (202) 632-1980.

**SUPPLEMENTARY INFORMATION:** To facilitate the entry into the United States of participants in Summer or Winter Olympic Games, or the Pan American Games or other Regional Games held under the auspices of the International Olympic Committee, the Department, in consultation with the Immigration and Naturalization Service, has determined that a simplified form of a nonimmigrant visa stamp placed on an identity card duly issued under the Olympic Rules Bylaws, plus the signature of the consular officer affixed on the card will constitute a duly issued visa to the bearer of such a card. Both the Department and the Service are satisfied that a properly completed games' identity card meets the requirements of a travel document under section 101(a)(30) and 212(a)(26) of the Immigration and Nationality Act. Compliance with the provisions of Section 553 of Title 5 of the United States Code (80 Stat. 383) as to notice of proposed rule making and delayed effective date is unnecessary in this instance because the amendment to § 41.124 is merely a technical change designed to simplify the process of issuing nonimmigrant visas to participants in the above Games.

Section 41.124 is amended by adding a new subparagraph (1) to read as follows:

**§ 41.124 Procedures in issuing visas.**

* * * * *

(l) *Olympic Games, Pan American Games or other Regional Games.* Notwithstanding the provisions of paragraph (c) of this section, in the case of an alien who:

(1) Is a participant in the Summer or Winter Olympic Games, the Pan American Games or other Regional Games under the auspices of the International Olympic Committee, held in the United States; and

(2) Is the holder of an official identity card which has been issued for participation in such Games under the Olympic Rules Bylaws, which includes the signature of a competent authority of the participating government and the assurance of that government's recognition of the card for reentry by the bearer for an additional period of six months beyond the expiration date of the card, and which otherwise meets the requirements of sections 101(a)(30) and 212(a)(26) of the Immigration and Nationality Act.

a stamp consisting of:

(i) The imprint of the issuing post's rubber stamp seal; and

(ii) The signature of a consular officer affixed on the identity card

shall constitute a multiple entry B-1/B-2 visa valid for the duration of the card, or, in the case of a representative of foreign press, radio, film or other foreign information media, a multiple entry I visa valid for the duration of the card.

This amendment is issued pursuant to the authority contained in Section 104 of the Immigration and Nationality Act (sec. 104, 66 Stat. 8 U.S.C. 1104).

Dated: June 4, 1979.

**Barbara M. Watson,**

*Assistant Secretary for Consular Affairs.*

[FR Doc. 79-17657 Filed 6-6-79; 8:45 am]

BILLING CODE 4710-06-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 24 CFR Part 1914

**[Docket No. FI 5495]**

### Suspension of Community Eligibility Under the National Flood Insurance Program

**AGENCY:** Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency [1]

**ACTION:** Final rule.

**SUMMARY:** This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

**EFFECTIVE DATES:** The third date ("Susp.") listed in the fifth column.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless and appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (24 CFR Part 1909 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202 (a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquistion of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elasped since identification of the community as having flood prone areas, as shown on the Federal Insurance Administration's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

[1] The functions of the Federal Insurance Administration, U.S. Department of Housing and Urban Development, were transferred to the newly established Federal emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979)

§ 1914.6 List of eligible communities.

| State | County | Location | Community No. | Effective dates of authorization/ cancellation of sale of flood insurance in community | Special flood hazard area identified | Date[1] |
|---|---|---|---|---|---|---|
| Idaho | Shoshone | Kellogg, city of | 160131-B | June 26, 1974, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Jan. 9, 1974 Jan. 23, 1976 | Do. |
| Do | do | Pinehurst, city of | 160200-A | Sept. 27, 1974, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Jan. 31, 1975 | Do. |
| Do | do | Wallace, city of | 160118-B | May 15, 1974, emergency, July 2, 1979, regular, July 2, 1979, suspended. | June 7, 1974 Jan. 16, 1976 | Do. |
| Louisiana | East Baton Rouge Parish | Unicorporated areas | 220058-A | June 12, 1970, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Nov. 22, 1974 | Do. |
| Maryland | Montgomery | do | 240049-B | Oct. 31, 1972, emergency, July 2, 1979, regular, July 2, 1979, suspended. | July 18, 1975 Apr. 2, 1976 | Do. |
| Massachusetts | Worcester | Millbury, town of | 250318-B | May 4, 1973, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Feb. 22, 1974 Mar. 4, 1977 | Do. |
| Do | Hampshire | Westhampton, town of | 250173-B | Mar. 12, 1975, emergency, July 2, 1979, regular, July 2, 1979, suspended. | June 28, 1974 July 16, 1976 | Do. |
| Michigan | Saginaw | Saginaw, township of | 260190-B | July 13, 1973, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Sept. 13, 1974 July 9, 1976 | Do. |
| Do | do | Zilwaukee, city of | 260285-B | Jan. 21, 1974, emergency, July 2, 1979, regular, July 2, 1979, suspended. | May 17, 1974 | Do. |
| Minnesota | Carver | Chanhassen, city of | 270051-B | June 23, 1975, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Nov. 9, 1973 July 2, 1976 | Do. |
| Do | Washington | Lake Elmo, city of | 270505-B | Aug. 18, 1972, emergency, July 2, 1979, regular, July 2, 1979, suspended. | May 17, 1974 June 4, 1976 | Do. |
| Do | Brown | Springfield, city of | 270038-B | Apr. 23, 1979, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Nov. 30, 1973 Mar. 19, 1976 | Do. |
| Mississippi | Hinds | Unincorporated areas | 280070-B | Dec. 19, 1973, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Oct. 18, 1974 Feb. 24, 1978 | Do. |
| Do | Attala | Kosciusko, city of | 280007-B | Nov. 15, 1974, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Jan. 23, 1974 June 18, 1976 | Do. |
| Montana | Lincoln | Libby, city of | 300042-B | July 2, 1975, emergency, July 2, 1979, regular, July 2, 1979, suspended. | May 31, 1974 | Do. |
| New Hampshire | Hillsborough | Amherst, town of | 330081-B | May 28, 1974, emergency, July 2, 1979, regular, July 2, 1979, suspended. | May 28, 1974 | Do. |
| Do | Carroll | Jackson, town of | 330014-B | Aug. 21, 1975, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Aug. 30, 1974 Nov. 5, 1976 | Do. |
| New Jersey | Bergen | Allendale, Borough of | 340019-A | June 2, 1972, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Mar. 16, 1973 | Do. |
| Do | Monmouth | Keyport, Borough of | 340304-B | Jan. 23, 1974, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Jan. 23, 1974 Feb. 6, 1976 | Do. |
| Do | Burlington | Riverside, township of | 340113-B | Feb. 9, 1973, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Feb. 11, 1977 | Do. |
| Do | do | Willingboro, township of | 340119-B | Sept. 15, 1972, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Nov. 30, 1973 Oct. 8, 1976 | Do. |
| New York | Erie | Colden, town of | 360233-B | May 27, 1975, emergency, July 2, 1979, regular, July 2, 1979, suspended. | May 31, 1974 July 2, 1976 | Do. |
| Do | do | Lancaster, village of | 360248-C | May 19, 1975, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Apr. 12, 1974, May 14, 1976 Mar. 4, 1977 | Do. |
| Pennsylvania | Montgomery | Lower Providence, township of | 420703-A | Mar. 30, 1973, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Dec. 28, 1973 | Do. |
| Rhode Island | Providence | Burrillville, town of | 440013-B | June 6, 1975, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Sept. 13, 1974 Aug. 2, 1977 | Do. |
| Texas | Tarrant | Benbrook, city of | 480586-B | Nov. 2, 1973, emergency, July 2, 1979, regular, July 2, 1979, suspended. | May 3, 1974 Mar. 4, 1977 | Do. |
| Do | Mason | Mason, city of | 480467-B | Mar. 5, 1976, emergency, July 2, 1979, regular, July 2, 1979, suspended. | May 10, 1974 Apr. 16, 1976 | Do. |
| Vermont | Windsor | Hartford, town of | 500148-A | Feb. 11, 1972, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Nov. 22, 1974 | Do. |
| Virginia | | Fredericksburg, city of | 510065-B | Nov. 5, 1973, emergency, July 2, 1979, regular, July 2, 1979, suspended. | June 21, 1974 Oct. 31, 1975 | Do. |
| Washington | Whitman | Colton, town of | 530244-A | June 18, 1976, emergency, July 2, 1979, regular, July 2, 1979, suspended. | May 2, 1975 | Do. |

| State | County | Location | Community No. | Effective dates of authorization/ cancellation of sale of flood insurance in community | Special flood hazard area identified | Date[1] |
|---|---|---|---|---|---|---|
| Do | Kitsap | Poulsbo, city of | 530241-B | June 19, 1974, emergency, July 2, 1979, regular, July 2, 1979, suspended. | Dec. 6, 1974 Feb. 20, 1976 | Do. |

[1] Certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: May 31, 1979.

**Gloria M. Jimenez,**

*Federal Insurance Administrator.*

[FR Doc. 79-17445 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-23-M

## [24 CFR Part 1914]

## [Docket No. FI 5494]

## List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

**AGENCY:** Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency [1]

**ACTION:** Final rule.

**SUMMARY:** This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

**EFFECTIVE DATES:** The date listed in the fourth column of the table.

**ADDRESSES:** Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

[1] The functions of the Federal Insurance Administration, U.S. Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979)

**§ 1914.6 List of eligible communities.**

| State | County | Location | Community No. | Effective dates of authorization/ cancellation of sale of flood insurance in community | Special flood hazard area identified |
|---|---|---|---|---|---|
| Alabama | Tuscaloosa | Tuscaloosa, city of | 010203-A | May 21, 1979, suspension withdrawn. | Oct. 24, 1975. |
| New Hampshire | Merrimack | Canterbury, town of | 330108-A | do | Apr. 5, 1974 and Jan. 14, 1979. |
| California | San Bernadino | Barstow, city of | 060271 | May 24, 1979, emergency. | Jan. 17, 1975. |
| Mississippi | Lawrence | Unincorporated areas | 280272 | May 22, 1979, emergency. | Sept. 16, 1977. |
| New York | Warren | Thurman, town of | 360881 | May 24, 1979, emergency. | Aug. 20, 1976. |
| Pennsylvania | York | Loganville, borough of | 422213 | do | |
| South Dakota | Grant | Unincorporated areas | 460266-A | do | Dec. 20, 1977. |
| Ohio | Ottowa | Marblehead, village of | 390748 | May 29, 1979, emergency. | Apr. 18, 1975. |
| Georgia | Talbot | Unincorporated areas | 130396 | May 30, 1979, emergency. | Mar. 26, 1976. |
| Michigan | Calhoun | Marengo, township of | 260563 | do | Sept. 19, 1975. |
| Pennsylvania | Butler | Allegheny, township of | 422341 | do | Mar. 28, 1975. |
| Do | Bradford | Overton, township of | 421402-A | May 31, 1979, emergency. | Aug. 30, 1974 and Aug. 6, 1976. |
| Do | Potter | Pleasant Valley, township of | 421984 | do | Nov. 29, 1974. |
| Do | York | Warrington, township of | 422232 | do | Dec. 27, 1974. |
| Tennessee | Carter | Unincorporated areas | 470024 | May 30, 1979 | July 15, 1977. |
| Missouri | Lawrence | Pierce City, city of | 290203-A | May 6, 1975, emergency May 29, 1979, withdrawal. | May 17, 1974 and June 11, 1976. |

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: May 31, 1979.

**Gloria M. Jimenez,**

*Federal Insurance Administrator.*

[FR Doc. 79-17446 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-23-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7627]

## Arbitrage Bonds; Income Tax; Taxable Years Beginning After December 31, 1953

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document provides final regulations relating to arbitrage bonds. Changes to the applicable tax law were made by the Tax Reform Act of 1969. These regulations affect purchasers and governmental issuers of tax-exempt bonds.

**DATE:** The regulations are effective for governmental obligations issued after May 31, 1979. For governmental obligations issued before the effective date of the final regulations, the proposed income tax regulations (26 CFR Part 1), as amended, under section 103(c) of the Internal Revenue Code of 1954 shall apply according to their internal effective dates. However, for purposes of applying the preceding two sentences, bonds that were the subject of a validation proceeding commenced before May 3, 1978, and with respect to which a bona fide preliminary offering statement had been prepared in final form for distribution before May 11, 1978, shall be considered to have been issued on May 2, 1978.

**FOR FURTHER INFORMATION CONTACT:** Leonard T. Marcinko of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention CC:LR:T, 202-566-3459).

**SUPPLEMENTARY INFORMATION:**

### Background

On May 3, 1973, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 103(c) of the Internal Revenue code of 1954 (38 FR 10944). The proposed regulations were revised by notices of proposed rulemaking published in the **Federal Register** for December 3, 1975 (40 FR 56488), October 29, 1976 (41 FR 47679), May 31, 1977 (42 FR 27610), June 9, 1977 (42 FR 29517), May 8, 1978 (43 FR 19675), and September 7, 1978 (43 FR 39822), and corrected by notices published in the **Federal Register** for May 11, 1973 (38 FR 12405), December 18, 1975 (40 FR 58656), November 24, 1976 (41 FR 51840), and June 21, 1977 (42 FR 31462). These amendments were proposed to conform the Income Tax Regulations to section 601(a) of the Tax Reform Act of 1969 (83 Stat. 656). After consideration of all comments from interested persons regarding the proposed regulations, they are adopted as revised by this Treasury decision.

### Explanation of Provisions

Section 103(a)(1) of the Internal Revenue Code of 1954 provides that gross income generally does not include interest on obligations of a State or political subdivision thereof. However, under section 103(c)(1) of the Code, as added by the Tax Reform Act of 1969, the interest on an arbitrage bond is not excludable from gross income. An arbitrage bond is generally defined as an obligation all or a major portion of the proceeds of which are reasonably expected to be used directly or indirectly (A) to acquire securities or obligations that may be expected to produce a yield over the term of the governmental issue that is materially higher than the yield on such issue; or (B) to replace funds used directly or indirectly to acquire securites or obligations described in (A).

The final regulations make a change to § 1.103-13(b)(5)(iv) of the proposed regulations, relating to an over-issuance of governmental obligations. Under the proposed regulations the yield on acquired obligations, acquired with the proceeds of an over-issuance, was materially higher than the yield on the govenmental obligations if the yield on such acquired obligations exceeded the yield on the governmental obligations by any amount. Under the final regulations, a small differential is permitted between the yield on the acquired obligations and the yield on the governmental obligations in the case of an over-issuance.

Under § 1.103-14(b) of the proposed regulations, the proceeds of an issue of governmental obligations may be invested at a materially higher yield during a 3-year temporary period if certain requirements are met. One of these requirements is that within 6 months after the date of issue, the State or local governmental unit must incur a substantial binding obligation to commence or acquire the project or projects to be financed by the issue. Certain comments received on the proposed regulations evidenced some uncertainty as to what constitutes a binding obligation for purposes of this requirement. The final regulations provide in § 1.103-14(b)(3)(iv) that an obligation may be binding by law or by

custom and usage. Also, a binding obligation may be subject to contingencies, if such contingencies are not within the issuer's control.

Section 1.103–14(b)(13) of the proposed regulations, as added by the September 7, 1978, notice of proposed rulemaking, provides a temporary period where an issuer requests a ruling under paragraph (d)(2) or (e)(5)(iii) of § 1.103–14 that its reserve or replacement fund is reasonably required. This temporary period continues from the date of issue until 30 days after final disposition of the ruling request. The proposed regulations require that the issuer apply for such a ruling at least 2 weeks prior to the issuance of the bonds. One of the comments pointed out that these provisions prevent an issuer from ever obtaining a ruling as to the size of its reserve or replacement fund, unless the request is made at least 2 weeks before the bonds are issued. This is true even if the issuer is willing to forego the special temporary period of § 1.103–14(b)(13). The final regulations take account of this problem by requiring that the ruling request be made at least 2 weeks prior to issuance of the bonds only where the issuer elects to use the temporary period provided in § 1.103–14(b)(13) of the regulations.

The last substantive change made to the proposed regulations by this Treasury decision is to the provisions relating to reasonably required reserve or replacement funds. Paragraph (d)(5) of § 1.103–14 of the final regulations provides that certain mandatory accumulations in a reserve fund for one or more issues of governmental obligations will be considered reasonably required if three conditions are met. First, amounts must be paid into the fund as a result of a constitutional provision, statute, or ordinance adopted before May 3, 1978. Second, under the constitutional provision, statute, or ordinance, amounts paid into the fund can be used only to pay debt service on the issues. Third, the size of the payments made into the fund must be independent of the size of the outstanding bond issues of the governmental unit.

The final regulations delete the rule in proposed § 1.103–13(b)(6) relating to obligations taken down by purchasers pursuant to a delayed delivery agreement. This deletion was made to reflect the fact that the October 9, 1969, effective date is no longer relevant and was not intended to have any substantive effect.

The remainder of the changes made to the proposed regulations by this Treasury decision are technical or clerical in nature and have no substantive effect upon the rules adopted. Provisions in the proposed regulations that relate to obligations issued prior to the effective date of the final regulations have been deleted.

The regulations adopted by this Treasury decision impose no new reporting burdens or recordkeeping requirements. The principal effect of the final regulations is the implementation of the arbitrage bond restrictions of section 103(c) of the Code, as amended by the Tax Reform Act of 1969. Evaluation of the effectiveness of these regulations after issuance will be based upon comments received from offices within Treasury and the Internal Revenue Service, other governmental agencies, State and local governments, and the public.

## Drafting Information

The principal author of this regulation is Leonard T. Marcinko of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

## *Adoption of Amendments to the Regulations*

Accordingly, 26 CFR Part 1 is amended by adding, immediately after § 1.103–12, new §§ 1.103–13, 1.103–14, and 1.103–15, to read as follows:

### § 1.103–13 Arbitrage bonds.

(a) *Scope*—(1) *In general.* Under section 103(c)(1), an arbitrage bond shall be treated as an obligation not described in section 103(a)(1) and § 1.103–1. Thus, the interest on an arbitrage bond will be included in gross income and subject to Federal income taxation. In general, arbitrage bonds are obligations issued by a State or local governmental unit, the proceeds of which are reasonably expected to be used to acquire other obligations where the yield on such acquired obligations will be materially higher than the yield on the governmental obligations during the term of such governmental issue. The term "arbitrage bond" is defined in paragraph (b)(1) of this section. Under paragraph (b) of § 1.103–14, the investment of all or a portion of the proceeds of an issue of obligations for a temporary period or periods will not cause such obligations to be arbitrage bonds regardless of the yield produced by such investment. Paragraph (b)(6) of § 1.103–14 provides a temporary period for investment proceeds. Under paragraph (b)(1) of this section, the investment of less than a major portion of the proceeds of the issue in acquired obligations at a materially higher yield will not cause such obligations to be arbitrage bonds. Similarly, under paragraph (d) of § 1.103–14, the investment of a portion of the proceeds as a reasonably required reserve or replacement fund will not cause such obligations to be arbitrage bonds regardless of the yield produced by such investment. Even if an obligation is not an arbitrage bond under section 103(c), such bond may nevertheless be treated as an obligation which is not described in section 103(a)(1) and § 1.103–1 if it is an industrial development bond under section 103(b). For regulations as to special issues of Federal Treasury obligations offered to State and local governmental units, see 31 CFR Part 344.

(2) *Reasonable expectations.* (i) Under section 103(c)(2), the determination whether an obligation is an arbitrage bond depends on the issuer's reasonable expectations, as of the date of issue, regarding the amount and use of the proceeds of the issue. Thus, an obligation is not an arbitrage bond if, based on the issuer's reasonable expectations on the date of issue, the proceeds will not be used in a manner that would cause the obligation to be an arbitrage bond under section 103(c)(2), this section, § 1.103–14, and § 1.103–15. Reasonable expectations as to future events regarding governmental obligations may be established to the extent permitted by the certification described in subdivision (ii) of this subparagraph. For the treatment of certain issues with a face amount of $2,500,000 or less, see subdivision (iii) of this subparagraph.

(ii) (A) A State or local governmental unit may certify, in the bond indenture or a related document, reasonable expectations of the issuer on the date of issue as to future events.

(B) Certification by a State or local governmental unit will not tend to establish conclusions of law (including legal characterizations of future events).

(C) An officer responsible for issuing the bonds must certify for the issuer.

(D) In addition to the matters certified, the certification must set forth (in brief and summary terms) the facts and estimates on which the issuer's expectations are based and state that, to the best of the knowledge and belief of the certifying officer, the issuer's expectations are reasonable.

(E) (*1*) If a temporary period of more than 3 years is allowed under § 1.103–14(b)(5)(ii) (relating to certain

construction issues), the issuer must commission an independent architect or engineer to prepare a study of the planned construction. An architect or engineer will be considered independent if he is not employed by the issuer on a permanent basis.

(2) The study prepared by the architect or engineer must accompany the certification and must include an estimated completion date for each stage of the construction.

(F) Subsequent events do not affect a certification made in accordance with this subdivision.

(iii) In the case of an issue with a face amount of $2,500,000 or less, an unqualified opinion of counsel that such obligations are not arbitrage bonds can be conclusively relied upon by the holders of the obligations, if the opinion is reasonable and is not given in bad faith. This subdivision (iii) shall apply only to the first $2,500,000 of governmental obligations issued by (or on behalf of) a State or local governmental unit for the same project in any 12-month period. Thus, for example, if a town issues $2,500,000 of bonds for a school building on July 1, 1980, this subdivision does not apply to additional bonds issued for the same school building before July 1, 1981.

(iv) (A) If a certification contains a material misrepresentation, the Commissioner may disqualify the issuer. The Commissioner will publish notice that the issuer is disqualified in the Internal Revenue Bulletin. The disqualification will not affect bonds issued before the notice is published.

(B) An issuer that is disqualifed may not certify an issue under subdivision (ii) of this subparagraph.

(C) The Commissioner will give an issuer reasonable opportunity to be heard before it is disqualifed.

(D) If appropriate, the Commissioner may requalify an issuer. The Commissioner will publish notice that the issuer has been requalified in the Internal Revenue Bulletin.

(v) The provisions of this subparagraph may be illustrated by the following examples:

*Example (1).* (i) On July 5, 1980, city A issues $3,000,000 of municipal bonds to finance the construction of a water treatment facility. The city includes in the bond indenture a certification which contains a statement that 85 percent of the receipts from the sale of the bonds will be used for construction costs by July 5, 1983.

(ii) Construction of the water treatment facility was determined by the Environmental Protection Agency to have certain adverse effects. Consequently, work on the project was halted and the facility was redesigned to avoid the effects with the result that 85 percent of the receipts from sale of the bonds will not be expended for project costs by July 5, 1983. The certification is conclusive as to the issuer's reasonable expectations that 85 percent of receipts will be expended for construction costs by July 5, 1983.

(iii) Under the circumstances described in subdivision (ii), city A has not made a material misrepresentation in the certification which would permit the Commissioner to disqualify city A under subdivision (iv) of this subparagraph. If, however, city A did not actually expect that 85 percent of the receipts from sale of the bonds would be used for construction costs by July 5, 1983, the certification would contain a material misrepresentation. Under those circumstances, the Commissioner may disqualify city A.

*Example (2).* On January 1, 1980, city A sells $5 million of 6-percent refunding bonds. City A certifies the bonds in the manner described in subdivision (ii) of this subparagraph. In addition, attorney X gives an opinion that the bonds are not arbitrage bonds. In connection with the refunding issue, city A makes use of an artifice or device as described in paragraph (j) of this section. As a result, the legal conslusion reached by attorney X is erroneous and the refunding bonds are arbitrage bonds despite the certification.

*Example (3).* (i) The chairman of the county commission of county X made the following certification with respect to an issue of governmental obligations:

(1) The county is issuing and delivering, simultaneously with the delivery of this certificate, $2,500,000 principal amount of its General Obligation Library Bonds dated December 1, 1988 (herein called "the bonds"). The bonds are being issued for the purpose of providing for payment of a portion of the costs of constructing and equipping a new public library in and for the county.

(2) The estimated total costs of constructing and equipping said library (which is herein called "the library") will be not less than $3,235,000. The said total costs are expected to be financed with (i) $2,500,000 of proceeds from the sale of the bonds, (ii) a Federal grant in the amount of not more than $560,000, and (iii) approximately $151,000 in building funds made available to the county by the county X library board. The county has not yet determined how it will finance the deficiency ($24,000).

(3) The county has heretofore entered into a contract for the construction of the library, which contract obligates the payment by the county of not less than $100,000. The actual work of constructing the library began during the month of September 1988. It is contemplated that such work will proceed with due diligence to completion, expected on or about October 1, 1989.

(4) The county has heretofore expended, for payment of costs incurred in constructing and equipping the library, approximately $758,000, derived from (a) portions of the aforesaid Federal grant, (b) short-term borrowings made in anticipation of the issuance and sale of the bonds and which will be fully repaid within 5 days following the issuance of the bonds, and (c) building funds made available to the county by the county X library board.

(5) The principal proceeds to be derived by the county from the sale of the bonds (excluding the "premium" anticipated to be received by the county from such sale, which premium will, as required by law, be applied to payment of interest maturing with respect to the bonds on June 1, 1989) are expected to be used, needed, and fully expended for payment of costs of constructing and equipping the library (including the repayment of the short-term borrowings referred to in the preceding paragraph (4)) by no later than May 1, 1990.

(6) Except for the debt service fund established under section XII of the bond resolution, the county has not created or established, and does not expect to create or establish, any sinking fund or other similar fund.

(7) To the best of my knowledge, information, and belief, the above expectations are reasonable.

(8) The county has not been notified of any listing of it by the Internal Revenue Service as an issuer that may not certify its bonds.

(9) This certificate is being executed and delivered pursuant to §§ 1.103–13, 1.103–14, and 1.103–15 of the Income Tax Regulations under the Internal Revenue Code of 1954, as amended, and the undersigned chairman of the county commission is one of the officers of the county charged (by resolution and order of the said county commission) with the responsibility of issuing the bonds.

(ii) This certification by county X meets the requirements of subdivision (ii) of this subparagraph and conclusively establishes the county's reasonable expectations on the date of issue as to the future events described in the certification. However, nothing contained in this certification tends to establish any conclusions of law.

*Example (4).* (i) The chairman of the board of directors and the secretary-treasurer of the industrial development board of city A, a public corporation organized under the laws of State B (herein called "the Industrial Board"), made the following certification:

(1) The Industrial Board is issuing and delivering simultaneously with the delivery of this certificate, its Environmental Improvement Revenue Bonds, 1988 series A dated November 1, 1988, in the principal amount of $6,000,000 (herein called "the bonds"). The bonds are being issued for the purpose of providing funds for the permanent financing of costs of acquiring, constructing, installing and equipping, on certain real property located in county J, the air pollution control facilities described on exhibit A attached hereto and made a part hereto (the said facilities being herein together called "the project facilities"). Those of the project facilities described in paragraph (1) of said exhibit A are herein called "the quench car facilities"; those described in paragraph (2) of said exhibit A, the "sinter line facilities"; and those described in paragraph (3) of said exhibit A, "the mixer fume control facilities."

(2) The project facilities and certain real property (and interests therein) appurtenant thereto are, upon the completion of the acquisition, construction, installation, and

equipment of the project facilities, to be sold by the Industrial Board, on an installment basis, to Corporation C, a Delaware corporation (herein called "the corporation"), under and pursuant to an agreement of sale dated as of November 1, 1988 (herein called "the agreement"), between the Industrial Board (as seller) and the corporation (as buyer).

(3) The actual work of acquiring, constructing, installing, and equipping the quench car facilities has, pursuant to the provisions of a letter agreement between the corporation and the Industrial Board (which letter agreement was executed on behalf of the Industrial Board on May 10, 1988, and the corporation on May 11, 1988), heretofore begun and binding contracts or commitments obligating the expenditure, for the work of acquiring, constructing, installing, and equipping the quench car facilities, of not less than $100,000 have heretofore been entered into or made. It is anticipated that the total financeable costs of such acquisition, construction, installation, and equipment (excluding a pro rata portion of (a) interest during construction and (b) the expenses anticipate to be incurred, in connection with the issuance of the bonds) will be approximately $1,231,370. It is expected that the work of acquiring, constructing, installing, and equipping the quench car facilities will proceed with due diligence to full completion, presently anticipated on or about October 1, 1989.

(4) The actual work of acquiring, constructing, installing, and equipping the sinter line facilities has, pursuant to the provisions of a letter agreement between the corporation and the Industrial Board (which letter agreement was executed on behalf of the Industrial Board on May 10, 1988, and on behalf of the corporation on May 11, 1988), heretofore begun, and binding contracts or commitments obligating the expenditure for the work of acquiring, constructing, installing, and equipping the sinter line facilities of not less than $100,000 have heretofore been entered into or made. It is anticipated that the total financeable costs of such acquisition, construction, installation, and equipment (excluding a pro rata portion of (a) interest during construction and (b) the expenses anticipated to be incurred in connection with the issuance of the bonds) will be approximately $1,780,000. It is expected that the work of acquiring, constructing, installing, and equipping the sinter line facilities will proceed with due diligence to full completion, presently anticipated on or about January 1, 1990.

(5) While the actual work of acquiring, constructing, installing, and equipping the mixer fume control has not yet begun, binding contracts or commitments obligating the expenditure for the work of acquiring, constructing, installing, and equipping the mixer fume control facilities of not less than $100,000 have heretofore been entered into or made, and such actual work is expected to begin on or about June 30, 1989. Further, all such work is anticipated to proceed with due diligence thereafter to completion, presently expected on or about September 1, 1990. The total financeable costs of acquiring, constructing, installing, and equipping the mixer fume control facilities (excluding a pro rata portion of (a) interest during construction and (b) the expenses anticipated to be incurred in connection with the issuance of the bonds) are expected to be approximately $2,680,000.

(6) The total proceeds to be received by the Industrial Board on the sale of the bonds, i.e., the gross sum of $5,998,633.33, does not exceed the total of—

(a) The estimated total financeable costs of acquiring, constructing, installing, and equipping the project facilities (excluding (a) interest during construction and (b) the expenses anticipated to be incurred in connection with the issuance of the bonds), viz., the gross sum of $5,691,370, plus

(b) Interest on the bonds during construction of the project facilities and the expenses anticipated to be incurred in connection with the issuance of the bonds, viz., the gross sum of $263,630, plus

(c) The amount required to be set aside out of the proceeds to be derived by the Industrial Board from the sale of the bonds, for payment of a portion of the interest maturing thereon on May 1, 1989, viz., the sum of $43,633.33.

(7) The proceeds to be derived by the Board from the sale of the bonds, viz., the gross sum of $5,998,633.33, are expected to be needed and fully expended as follows:

(a) $43,633.33 of said proceeds will be set aside and paid into the "bond fund" (as said term is used and defined in the trust indenture dated as of November 1, 1988, between the Industrial Board and the First National Bank of A, under which the bonds are being issued) simultaneously with the issuance and delivery of the bonds and used and applied for payment of a portion of the interest maturing thereon on May 1, 1989;

(b) $263,630 of said proceeds will be expended for payment of (i) interest on the bonds during construction of the project facilities, and (ii) the expenses anticipated to be incurred in connection with the issuance of the bonds; and

(c) The remaining $5,691,370 of said proceeds will be expended for payment of the costs of acquiring, construction, equipping, and installing the project facilities (excluding (i) interest on the bonds during construction of the project facilities and (ii) the expenses anticipated to be incurred in connection with the issuance of the bonds) substantially in accordance with the following schedules:

| Quarter during which expected to be expended | Amount expected to be expended | | | |
|---|---|---|---|---|
| | Sinter line | Quench car | Mixer fume control | Total |
| 1988, Fourth | $280,000 | | | $280,000 |
| 1989, First | 250,000 | | $50,000 | 300,000 |
| 1989, Second | 430,000 | $720,250 | 350,000 | 1,500,250 |
| 1989, Third | 550,000 | 511,120 | 800,000 | 1,861,120 |
| 1989, Fourth | 270,000 | | 1,150,000 | 1,420,000 |
| 1990, First | | | 300,000 | 300,000 |
| 1990, Second | | | 30,000 | 30,000 |
| Totals | 1,780,000 | 1,231,370 | 2,680,000 | 5,691,370 |

(8) The facts and estimates in paragraphs (2) through (7) are based on representations made by Corporation C. The board is not aware of any facts or circumstances that would cause it to question the accuracy of the representations made by Corporation C.

(9) Money deposited in the debt service fund established by article X of the indenture for the bonds will be used to pay principal of and interest on the bonds and the board reasonably expects that there will be no other funds that will be so used.

(10) Any money deposited in the debt service fund will be spent within a 13-month period beginning on the date of deposit, and any amount received from investment of money held in the debt service fund will be spent within a 1-year period beginning on the date of receipt.

(11) To the best of our knowledge, information, and belief, the above expectations are reasonable.

(12) The Industrial Board has not been notified of any listing of it by the Internal Revenue Service as an issuer that may not certify its bonds.

(13) The undersigned are those officers of the Industrial Board charged, by resolution of the board of directors of the industrial Board, with the responsibility of actually issuing and delivering the bonds.

(ii) This certification by the Industrial Board of city A meets the requirements of subdivision (ii) of this subparagraph and conclusively establishes the board's reasonable expectations on the date of issue as to the future events described in the certification. However, nothing contained in this certification tends to establish any conclusions of law.

(iii) It has been assumed that the letter agreement described in this example constitutes "some other similar official action" within the meaning of § 1.103–8(a)(5).

*Example (5).* City D issues $10 million of 7-percent revenue bonds for the purpose of constructing a water treatment facility. Certain proceeds of the revenue bonds will be deposited with a trustee. In part, the trust agreement provides as follows: "In the event city D is of the opinion that it is necessary to restrict or limit the yield on the investment of any moneys paid to or held by the trustee hereunder in order to avoid the bonds, or any

series thereof, being considered 'arbitrage bonds' within the meaning of the Internal Revenue Code of 1954, as amended, the city may issue to the trustee a written certificate to such effect (along with appropriate written instructions), in which event the trustee will take such action as is necessary so to restrict or limit the yield on such investment in accordance with such certificate and instructions, irrespective of whether the trustee shares such opinion." If city D uses reasonable care in the selection of the trustee, it can reasonably expect the trustee to invest the funds in accordance with the trust agreement. This reasonable expectation will be conclusive without regard to the subsequent actions of the trustee.

*Example (6).* County Y, in connection with an issue of revenue bonds, covenants in the bond indenture that it will proceed with due diligence to spend the bond proceeds for the construction of a library. This covenant is included in the indenture as a bona fide safeguard for the protection of the bondholders. County Y can reasonably expect to comply with this covenant and, therefore, to satisfy the due diligence test of § 1.103–14(b)(4). The result is the same whether or not the bond proceeds are actually spent with due diligence.

(3) *Innocent mistake.* Bonds are not arbitrage bonds merely because of an inadvertent, insubstantial error (e.g., in arithmetic).

(b) *Definitions.* For purposes of this section, § 1.103–14, and § 1.103–15, the following definitions and rules apply:

(1) *Arbitrage bonds.* (i) Under section 103(c)(2), an obligation is an arbitrage bond if it is issued by a State or local governmental unit as part of an issue of obligations (for purposes of this section, § 1.103–14, and § 1.103–15 referred to as governmental obligations) all or a major portion of the proceeds of which are reasonably expected to be used directly or indirectly—

(A) To acquire acquired obligations which may reasonably be expected, on the date of issue of such governmental obligations, to produce a yield during the term of the issue of such governmental obligations which is materially higher than the yield on such issue, or

(B) To replace funds used directly or indirectly to acquire such obligations (see example (1) of § 1.103–14(e)(7)(ii)).

(ii) A major portion of the proceeds of an issue is any amount which at any time exceeds 15 percent of the original face amount of the issue. If the original proceeds of an issue determined without regard to issuing expenses are less than 98 percent of the original face amount of the issue, the percentage specified in the preceding sentence shall be based on the amount of such original proceeds. See § 1.103–14(e) for special rules that apply to refunding issues. In determining whether acquired obligations allocable to proceeds invested as less than a major portion at a materially higher yield are so invested, a major portion of the proceeds is invested at a materially higher yield if one or more of such obligations is acquired at a discount or results in interest payments for any annual period in excess of interest payments for any preceding annual period (thus reinvesting annually accrued interest or discount as principal) and if by taking into account the amount of such discount or excess interest (not discounted to present value) ratably each year over the term of such obligation the sum of such amounts plus the purchase price of all obligations allocable to less than a major portion at any time exceeds the amount specified in this paragraph (b)(1)(ii). The term "materially higher" is defined in paragraph (b)(5) of this section. Yield is computed under paragraphs (c) and (d) of this section. For rules with respect to bonds issued to finance certain governmental programs and with respect to exempt arbitrage bonds for educational personnel, see, respectively, paragraphs (h) and (e) of this section. Acquired obligations are defined in paragraph (b)(4) of this section and are allocated under paragraph (f) of this section to proceeds of governmental obligations.

(2) *Proceeds.* The types of proceeds attributable to an issue of governmental obligations are defined and illustrated as follows:

(i) "Original proceeds" are net amounts (after payment of all expenses of issuing the obligations) received by the State or local governmental unit as a result of the sale of such issue. Examples of issuing expenses are advertising and printing costs, financial advisors' and counsel fees, initial fees of trustees, paying agents, certifying or authenticating agents, and similar expenses.

(ii)(A) "Investment proceeds" are amounts received at any time by the issuer, such as interest and dividends, resulting from the investment of any proceeds of an issue of obligations in acquired nonpurpose obligations and amounts received as interest or dividends resulting from the investment of any proceeds of such issue in acquired purpose obligations. Thus, for example, the interest received on acquired Federal obligations purchased with the proceeds of an issue of governmental obligations constitutes investment proceeds of such issue whether or not such acquired obligations represent amounts invested for a temporary period or in a reasonably required reserve or replacement fund under § 1.103–14. Investment proceeds are increased by any profits and decreased (if necessary, below zero) by any losses on such investments. Amounts received from the investment of any proceeds of an issue (other than a refunding issue) are not investment proceeds if, within 1 year of receipt, such amounts are commingled for the purpose of accounting for expenditures with substantial tax or other substantial revenues from operations by a State or local governmental unit.

(B) Despite § 1.103–13(b)(2)(ii)(A), "investment proceeds" do not include receipts from investment of amounts treated as proceeds under § 1.103–13(g) (relating to invested sinking funds).

(3) *State or local governmental unit.* The term "State or local governmental unit" shall have the same meaning as in paragraph (a) of § 1.103–1.

(4) *Acquired obligations.* (i) The term "acquired obligations" means securities and obligations allocated to the proceeds of an issue of governmental obligations during the period of time that such issue is outstanding.

(ii) The term "securities" has the same meaning as in section 165(g)(2) (A) and (B). Thus, the term "security" means (A) a share of stock in a corporation, or (B) a right to subscribe for or to receive a share of stock in a corporation.

(iii) The term "obligation" means any evidence of indebtedness which is not described in section 103(a)(1). Thus, for example, if interest on a bond issued by a State or local governmental unit is not exempt in the hands of the holder because it is an industrial development bond or an arbitrage bond, the bond is an obligation within the meaning of this subdivision. For another example, a transaction which in form is a lease of property by a State or local governmental unit but which is treated for Federal income tax purposes as a loan (or an installment sale) is an obligation for purposes of this subdivision. Time or demand deposits (whether or not such deposits are interest-bearing) are obligations within the meaning of this subdivision to the extent that such deposit or deposits are maintained for the purposes for which the proceeds of the issue of obligations may be expended (including as a purpose any investment in a reserve or replacement fund). Cash is not an acquired obligation. For example, cash held or received by the trustee of an issue is not taken into account as a zero-yield obligation for the period it is held before being invested in an acquired obligation or for the period that it is held

after repayment of an obligation and before being reinvested in an acquired obligation. A contract between the issuer and another person is an acquired obligation if the other person is required under the contract personally (and not in his capacity as trustee or agent) to discharge any obligation of the issuer.

(iv) The classes of acquired obligations and the definitions of such classes are as follows:

(A) "Acquired purpose obligations" are obligations acquired to carry out the purpose of a governmental program for which the governmental obligations are issued. Thus, for example, a note secured by a mortgage on a facility built with the proceeds of an exempt small issue of industrial development bonds (within the meaning of section 103(b)(6) and § 1.103–10) is an acquired purpose obligation in the hands of the issuer of such exempt small issue. Obligations acquired solely for the purpose of realizing an arbitrage profit are not acquired purpose obligations. Acquired obligations acquired with proceeds of a refunding issue that are to be used to discharge the prior issue or that are invested in a reasonably required reserve or replacement fund as less than a major portion are not acquired purpose obligations. However, acquired obligations acquired with transferred proceeds may be acquired purpose obligations if such obligations would have been so treated if the prior issue had not been refunded.

(B) "Acquired nonpurpose obligations" are acquired obligations other than acquired purpose obligations.

(5) *Materially higher.* (i) The yield produced by acquired obligations is materially higher than the yield produced by an issue of governmental obligations if the yield produced by the acquired obligations exceeds the yield produced by the issue of governmental obligations by more than (A) one-eighth of 1 percentage point or (B), at the election of the issuer, one-half of 1 percentage point if the issuer waives the provisions of paragraph (b) (1) through (5) of § 1.103–14 (relating to the temporary period). Notwithstanding an election under (B) of this subdivision, the requirements of paragraph (b)(2)(ii) of § 1.103–14 (relating to the expenditure test) must be satisfied. See paragraph (b)(5) (ii) and (iii) of this section for rules regarding refunding proceeds, and see paragraph (b)(5)(iv) of this section for rules regarding an over-issuance of obligations.

(ii) In the case of a refunding issue, the rules of paragraph (b)(5)(iii) of this section apply to such issue in lieu of the provisions of paragraph (b)(5)(i) and (e)(1)(ii) of this section. The term "refunding issue" is defined in § 1.103–14(e)(2)(i).

(iii) (A) Prior to the date on which the last obligation of the prior issue (as defined in § 1.103–14(e)(2)(i)) is discharged, the yield produced by acquired obligations allocated to the proceeds (other than transferred proceeds as defined in § 1.103–14(e)(2)(ii)) of the refunding issue is materially higher than the yield produced by such issue if the yield on such acquired obligations is higher than—

$$Y+[(\$25{,}000\times Y)\div P]$$

where—

*(1)* "Y" stands for the yield on the issue, and

*(2)* "P" stands for the amount of the original proceeds of the issue.

(B) The rules of paragraph (b)(5)(i) of this section apply to the yield produced by acquired obligations allocated to *(1)* transferred proceeds and *(2)* on or after the date on which the last obligation of the prior issue is discharged, other proceeds of the refunding issue. The determination as to whether the yield on acquired obligations allocated to transferred proceeds is materially higher shall be made with reference to the yield on the refunding issue. The rules of paragraph (b)(5) (i)(B) and (iv) of this section and the rules of paragraph (e)(1)(ii) of this section shall apply to transferred proceeds if such rules applied to the prior issue.

(C) If a refunding issue refunds a prior issue that is a refunding issue, proceeds of the prior refunding issue that would be treated as transferred proceeds of the subsequent refunding issue under § 1.103–14(e)(2)(ii) shall not be treated as transferred proceeds prior to the date on which the last obligation of the issue which is not a refunding issue is discharged by the prior refunding issue or series of refunding issues. Rather, prior to that date, such proceeds shall be treated as proceeds of the subsequent refunding issue in applying this subdivision (iii). After such date, paragraph (b)(5)(iii)(B) applies to such proceeds.

(iv) If it is reasonably expected that the original proceeds of an issue will exceed the amount necessary for the governmental purpose or purposes of the issue by more than 5 percent of such amount, the rules of this subdivision shall apply in lieu of the provisions of paragraph (b)(5) (i) and (iii) of this section. Any portion of the issue issued solely for the purpose of investing such portion at a materially higher yield as less than a major portion is not issued for a governmental purpose. If there are two or more projects (within the meaning of § 1.103–14(b)(2)), such projects shall, for purposes of this subdivision, be deemed to be a single governmental purpose. The yield produced by acquired obligations acquired with the proceeds of such issue (including any acquired obligations held during the temporary periods described in § 1.103–14(b), any amounts invested in the reserve or replacement fund as defined in § 1.103–14(d), and any investments of less than a major portion of such proceeds as described in paragraph (b)(1) of this section) is materially higher than the yield produced by an issue of governmental obligations if the yield produced by the acquired obligations is higher than—

$$Y+[(\$5{,}000\times Y)\div P]$$

where—

(A) "Y" stands for the yield on the issue, and

(B) "P" stands for the amount of the original proceeds of the issue.

Nothing in this subdivision implies that a deliberate over-issuance of less than 5 percent will not be treated as an artifice or device (§ 1.103–13(j)).

(v) The following examples illustrate the application of paragraph (b)(5)(iv) of this section:

*Example (1).* On July 1, 1987, city A sells $10 million of 7-percent series A revenue bonds and $5 million of 4-percent series B special obligation bonds at par in the full cash defeasance of a prior issue. Assuming that under State law and the bond indenture the amount necessary to achieve the purpose of the refunding is only $10 million, paragraph (b)(5)(iv) of this section applies to both the series A and the series B issues.

*Example (2).* On July 1, 1988, city B sells $10 million of 7-percent revenue bonds at par. One and a half million dollars of the bond proceeds will be placed in a debt service reserve fund and invested for 25 years in Treasury bonds at a yield of 8½ percent. Assume that a reserve fund of no more than $800,000 is reasonably required for the revenue bonds. Based on these facts, paragraph (b)(5)(iv) of this section applies to the revenue bonds. Therefore, the revenue bonds are arbitrage bonds.

*Example (3).* On July 1, 1989, city C has outstanding $20 million of revenue bonds. In addition, city C has accumulated $15 million in a sinking fund for the revenue bonds. Assume that city C sells approximately $23 million of refunding bonds at par, defeasing the prior issue and freeing the sinking fund from any lien. The $15 million held in the sinking fund will continue to be invested in long-term Treasury bonds. Of the proceeds of the refunding issue, $20 million will be used to call the revenue bonds at par and $3 million will be used to establish a reserve of $3 million. Based on these facts, paragraph (b)(5)(iv) of this section applies to the

refunding issue. The amount necessary to call the outstanding revenue bonds is only $5 million (i.e., $20 million less the $15 million held in the sinking fund). Thus, at least $15 million of the proceeds of the refunding issue will not be needed for any governmental purpose.

(vi) Except as provided in subdivision (viii) of this subparagraph (and despite anything in § 1.103–13 (b) or (e) to the contrary), § 1.103–13(b)(5)(vii) applies to any acquired obligation that is allocated to amounts treated as proceeds under § 1.103–13(g) (relating to invested sinking funds).

(vii) Materially higher than the yield on an issue means higher than—

$$Y+[(\$5{,}000\times Y)\div F]$$

where—

(A) "Y" stands for the yield on the issue, and

(B) "F" stands for the maximum amount that will be accumulated in a sinking fund (or funds) for the issue.

(viii) The yield on an acquired program obligation is materially higher than the yield on an issue if the yield on the acquired program obligation exceeds—

(A) The yield on the issue, plus

(B) One and a half percentage points.

(ix) In lieu of the amount described in § 1.103–13(b)(5)(viii)(B), the issuer may substitute such larger amount as is necessary to pay expenses (including losses resulting from bad debts) reasonably expected to be incurred as a direct result of administering the program to the extent that such amounts are not payable with funds appropriated from other sources.

(6) *Date of issue.* The date of issue of an obligation is the date on which there is a physical delivery of the evidences of indebtedness in exchange for the amount of the issue price. For example, obligations are issued when the issuer physically exchanges the obligations for the underwriter's (or other purchaser's) check.

(7) *Term of an issue.* The term of an issue is the period beginning on the date of issue and ending on the latest maturity date of any obligation of the issue without regard to optional redemption dates.

(8) *Bond indentures and related documents.* The term "bond indenture" includes a bond resolution or ordinance. With respect to a bond indenture, the term "related documents" includes, for example, a trust agreement, a prospectus, or a transcript of proceedings and accompanying certificates.

(9) *Multipurpose issues.* (i) In the case of an issue of governmental obligations—

(A) Issued to finance two or more projects with respect to which the temporary periods provided in paragraph (b) (1) or (5) of § 1.103–14 are different (including different temporary periods resulting from an election under paragraph (b)(5)(i)(B) of this section), or

(B) Part of the proceeds of which are used for refunding to which the rules of paragraph (e) of § 1.103–14 apply or for a governmental program to which the rules of paragraph (h) of this section apply,

the portion of the proceeds of such governmental obligations to be used to finance project having different temporary periods or to be used partly for refunding or partly for a governmental program shall be treated as separate issues of governmental obligations for purposes of determining the temporary period requirements, the reasonably required reserve or replacement fund, the application of the major portion test, and the application of § 1.103–15 (relating to excess proceeds) with respect to each such separate issue.

(ii) For purposes of this section and for purposes of § 1.103–14, the term "project" means any governmental purpose financed by the issue of governmental obligations. Such purpose does not include the investment of the proceeds of such issue in acquired nonpurpose obligations.

(10) *Issue.* (i) Two or more obligations are part of the same "issue" if the obligations—

(A) Are issued at substantially the same time,

(B) Are sold pursuant to a common plan of financing, and

(C) Will be paid out of substantially the same source of funds (or will have substantially the same claim to be paid out of substantially the same source of funds).

All other facts such as whether the obligations are offered by the same official statement or are sold under the same indenture) are irrelevant for purposes of this subparagraph.

(ii) The following examples illustrate the application of this subparagraph:

*Example (1).* On January 1, 1980, city T issues $10,000,000 of series A revenue bonds and on January 7, 1980, city T issues $5,000,000 of series B revenue bonds. The series A and series B bonds are sold pursuant to a common plan of financing and both will be paid solely out of revenues of the city T water works. Based on these facts, the series A and series B bonds are all part of one issue.

*Example (2).* The facts are the same as in example (1), except that the series B bonds are special obligation bonds and will be paid out of interest on Treasury obligations. Because the series A and series B bonds will not be paid from the same source of funds, they are treated as separate issues.

(11) *Discharged.* An issue is "discharged" when cash is available on the date due (whether at maturity or upon prior call for redemption) at the place of payment and interest ceases to accrue on the issue.

(12) *Bona fide debt service fund.* (i) A bona fide debt service fund is a fund that is used primarily to achieve a proper matching of revenues and debt service within each bond year.

(ii) A bona fide debt service fund for a single issue must be depleted at least once a year except for a reasonable carryover amount (not to exceed the greater of (A) 1 year's earnings on the fund or (B) one-twelfth of annual debt service).

(iii) A bona fide debt service fund may be established for two or more issues, provided that the total amount in the fund at no time exceeds the total of the amounts that could be held in bona fide debt service funds established separately for each of the issues.

(c) *Computation of yield*—(1) *In general.* (i) Paragraph (c)(1)(iii) of this section provides rules to determine the yield on acquired nonpurpose obligations allocable to a refunding issue. Paragraph (c)(1)(ii) of this section provides rules to determine yield on governmental obligations and all other acquired obligations.

(ii) For purposes of this section and § 1.103–14, the term "yield" means that yield which when used in computing the present worth of all payments of principal and interest to be paid on the obligation produces an amount equal to the purchase price. The yield on both governmental obligations and acquired obligations shall be calculated by the use of the same frequency interval of compounding interest. Thus, for example, if the yield on the governmental obligations is determined on the basis of semiannual interest compounding, then the yield on acquired obligations acquired with the proceeds of such governmental obligations shall also be expressed in terms of semiannual interest compounding. In the case of governmental obligations, the computation must be made separately for each issue of obligations issued by a governmental unit, except that a single computation may be made for two or more issues if, before the issuance of the last issue, the issuer established to the satisfaction of the Commissioner that

the single computation will not distort yield or otherwise tend to defeat the purposes of section 103(c). In the case of acquired obligations, the computation shall be made separately with respect to each class of acquired obligations referred to in paragraph (b)(4)(iv) of this section allocated to an issue of governmental obligations. The yield produced by an acquired obligation which is a security may be computed by any method which is consistent with the principles of the actuarial method of computing yield. For purposes of such computations, securities held beyond the last expected maturity date of the governmental obligations shall be deemed to be sold on such maturity date. In cases where the issuer has no reasonable expectations as to the amount of principal to be repaid on an acquired security at the time that such security is sold, the amount of such principal shall be deemed to be the same as the fair market value of such security on the date of issue of the governmental obligations to which such security is allocated or, if later, the date on which such security is acquired. No yield computation need be made with respect to an acquired obligation while such obligation is held during the temporary period or periods referred to in paragraph (b) or (e) of § 1.103–14, since yield allocable to such temporary period or periods is disregarded in determining whether a governmental obligation is an arbitrage bond. However, in the case of an acquired obligation which is held during and after a temporary period, if the yield applicable to the temporary period exceeds the yield of a comparable obligation that could be acquired and held only during such temporary period, then the computation of yield on such acquired obligation must be made by taking into account the yield allocable to such temporary period or periods. No computation need be made with respect to acquired obligations which represent a reasonably required reserve or replacement fund under paragraph (d) or (e) of § 1.103–14 or represent investments of less than a major portion of the proceeds within the meaning of paragraph (b)(1) of this section or paragraph (e) of § 1.103–14. See paragraph (b)(5)(iv) of this section for rules regarding an over-issuance of obligations.

(iii) (A) In the case of acquired nonpurpose obligations (as defined in paragraph (b)(4)(iv)(B) of this section) allocable to a refunding issue, the term "yield" means the yield computed under paragraph (c)(1)(ii) of this section based on the market price of the acquired obligations as determined under this paragraph (c)(1)(iii). This paragraph (c)(1)(iii) applies to proceeds of the refunding issue during the period beginning on the date of issue and ending on the date the last obligation of the prior issue is discharged.

(B) The market price of an acquired obligation shall be the mean of the bid and offered prices on an established market where such obligation is traded on the date of issue of the refunding issue, or, if earlier, on the date of a binding contract to acquire such obligation, or if there are no bid and offered prices on such date, on the first day preceding such date for which there are bid and offiered prices. Any acquired obligation for which there is not an established market shall be treated as producing a yield materially higher than the yield of the refunding issue and will cause obligations of the refunding issue to be arbitrage bonds, unless no yield computation is necessary under paragraph (c)(1)(ii) of this section with respect to such acquired obligation. Any market especially established to provide an acquired obligation to an issuer of governmental obligations will not be treated as an established market. For example, if a person sell stripped coupon bonds to issuers of governmental obligations and there is not an established market for sales of such bonds to other persons, such sales will not establish a market. The mean market price may be determined by reference to any appropriate publication, such as, for example, "Composite Closing Quotations for United States Government Securities" published by the Federal Reserve Bank of New York. Where the price of an obligation is quoted on an established market in terms of yield, the market price shall be the price necessary to produce such yield using the method of computing yield under paragraph (c)(1)(ii) of this section (determined without regard to any administrative costs with respect to such obligation). The market price of an acquired obligation may be established by the borrowing practices of the issuer of the obligation, as, for example, by determining the market price based on the interest ordinarily paid by such issuer to persons other than governmental units with respect to obligations of comparable maturities. The market price of a time or demand deposit (other than a deposit acquired with transferred proceeds) shall be determined under the preceding sentence by taking into account the yield that would be paid by the obligor if the deposit were held as an interest bearing deposit for the expected period of the deposit, except that if the yield actually paid is higher than such yield the market price shall be the amount of the deposit. If the price paid for an obligation is lower than the mean market price, such lower price shall be the market price for purposes of this paragraph. If the price paid for an obligation is higher than the mean market price, such higher price may be used as the market price only if the obligation is acquired in an arm's length transaction without regard to any amount paid to reduce the yield on the obligation. For purposes of this paragraph, where a United States Treasury obligation is acquired directly from the United States Treasury, such acquisition shall be treated as establishing a market for such obligation and as establishing the market price of such obligation.

(C) The market price of a certificate of deposit issued by a commercial bank may be determined as the bona fide bid price quoted by a dealer who maintains an active secondary market in such certificates of deposit.

(iv) The rules in paragraph (c)(1)(iii) shall also apply to acquired obligations that are allocable to amounts treated as proceeds under paragraph (g) of this section.

(2) *Classes of acquired obligations.* The yield produced by a class of acquired obligations shall be computed as if all of the obligations of such class comprised a single issue of obligations, whether or not such obligations are to be acquired or held concurrently. Thus, for example, if an issuer uses the proceeds of an issue to acquire two blocks of nonpurpose obligations (such as, for example, Federal obligations) with different interest rates and maturity periods for each block, the yield on such acquired nonpurpose obligations shall be computed as if such issuer acquired one issue of obligations with different interest rates and maturity periods. The maturity period of each acquired obligation shall be the period that the State or local governmental unit will hold such obligation.

(3) *Student loans.* Payments made by the Commissioner of Education pursuant to section 127(a) of the Education Amendments of 1976 are not taken into account in determining yield on student loan notes.

(4) *Example.* The provisions of this paragraph may be illustrated by the following example:

*Example.* (i) On January 1, 1984, city A sells for a premium of $100,000 a 5-year $1 million obligation. City A will make semiannual interest payments beginning on July 1, 1984, of $36,425.88 and will make the $1 million principal payment on January 1, 1989. The proceeds of the issue are to be used for a municipal construction project, and city A reasonably expects on the date of issue that the project will be paid for by January 1, 1987. A portion of the proceeds of the issue are invested in a reasonably required reserve or replacement fund which will extend through the term of the issue. On January 1, 1984, $9,800 of the proceeds of the issue (other than the proceeds invested in the reasonably required reserve and replacement fund) are used to buy an acquired obligation which has a par value of $10,000 a stated interest rate of 4.7585 percent per annum, and a maturity date of January 1, 1989. Interest on the acquired obligation will be paid annually at the rate of $475.85. Interest on the acquired obligation will be used when received to pay construction expenses as received.

(ii) The yield on the governmental obligations is 5 percent and is computed as follows:

| Date | Payments (interest and principal) | Present worth factor | Column (1) times column (2) |
|---|---|---|---|
| 7-1-84 | $36,425.88 | $0.97560976 | $35,537.44 |
| 1-1-85 | 36,425.88 | 0.95181440 | 34,670.68 |
| 7-1-85 | 36,425.88 | 0.92859941 | 33,825.05 |
| 1-1-86 | 36,425.88 | 0.90595064 | 33,000.05 |
| 7-1-86 | 36,425.88 | 0.88385429 | 32,195.17 |
| 1-1-87 | 36,425.88 | 0.86229687 | 31,409.92 |
| 7-1-87 | 36,425.88 | 0.84126524 | 30,643.83 |
| 1-1-88 | 36,425.88 | 0.82074657 | 29,896.42 |
| 7-1-88 | 36,424.88 | 0.80072836 | 29,167.24 |
| 1-1-89 | 36,425.88 | 0.78119840 | 28,455.84 |
| 1-1-89 | 1,000,000.00 | 0.78119840 | 781,198.40 |
| Total | | | 1,100,000.04 |

The present worth factor represents the present worth of a dollar payable at the specified future date based on an annual interest rate of 5 percent compounded semiannually.

(iii) The yield on the acquired obligation is 5.124257 percent and is computed as follows:

| | Payments (interest and principal) | Present worth factor | Column (1) times column (2) |
|---|---|---|---|
| Year 1 | $475.85 | $0.9506615900 | $452.37 |
| Year 2 | 475.85 | 0.9037574700 | 430.05 |
| | 10,000.00 | 0.9037574700 | 9,037.57 |
| Total | | | 9,919.99 |

The present worth factor represents the present worth of a dollar payable at the specified future date based on an annual interest rate of 5.124257 percent compounded semiannually. Since the yield on the acquired obligation allocable to the temporary period does not exceed the current market true yield on a comparable acquired obligation held for a 3-year period, no yield computation need be made with respect to such acquired obligation while it is held during the 3-year temporary period. Thus, the yield is computed as though the obligation matured on January 1, 1986, and as though the obligation were purchased at a discount of $80 (two-fifths of the $200 discount on the obligation).

(5) *Certain administrative costs.* If acquired purpose obligations are allocable (under § 1.103–13(f)) to an issue, then the following rules apply:

(i) In determining the yield on the acquired purpose obligations, administrative costs paid by the obligor shall not be taken into account.

(ii) Subdivision (i) of this subparagraph applies whether or not the obligor's payments are made from bond proceeds and whether or not such payments merely reimburse the issuer. For this purpose, any payments made by the obligor may be treated as reimbursements of administrative costs, *provided* That the present value of such payments does not exceed the present value of administrative costs paid by the issuer.

(iii) In determining the present value of any payments or costs, the yield on the issue (as determined under § 1.103–13 (c) and (d)) shall be used as the discount rate.

(iv) For purposes of this subparagraph, the term "administrative costs" means—

(A) The cost of issuing, carrying, or repaying the issue,

(B) The underwriter's spread, and

(C) The cost of purchasing, carrying, and selling or redeeming acquired purpose obligations.

(6) *Monthly payments.* An issuer may treat regular monthly payments on an acquired purpose obligation as if they were received semiannually.

(7) *Examples.* The following examples illustrate the application of subparagraphs (5) and (6) of this paragraph:

*Example (1).* On January 1, 1989, authority A sells $1,050,000 of single-family housing bonds. The yield on the bonds is 7 percent (determined under § 1.103–13 (c) and (d) on the basis of semiannual compounding). Authority A uses the bond proceeds to make 50 identical 25-year mortgage loans of $20,000 each. The mortgage loans are acquired program obligations (within the meaning of § 1.103–13(h)). Authority A uses the remaining $50,000 of proceeds to cover the underwriter's spread and to pay other administrative costs on January 1, 1989. Under the terms of each mortgage loan, authority A will receive level monthly payments of $168.98. Of each payment, $161.87 will be denominated principal and interest, and the remaining $7.11 will be denominated a "finance fee." On January 1, 1989, the present value of all these finance fees (using a discount rate of 7 percent) is $50,000. Therefore, these fees merely reimburse authority A for $50,000 of administrative costs. Accordingly, the finance fees are not taken into account in determining the yield on the mortgage notes. Consequently, the yield on the mortgage notes (computed by treating monthly payments as received semiannually on January 1 and July 1 of each year) is only 8.5 percent. Under § 1.103–13(b)(5)(viii), this yield of 8.5 percent is not materially higher than the yield on the single-family housing bonds.

*Example (2).* The facts are the same as in example (1), except that the entire monthly payment of $168.98 on each mortgage note will be denominated principal and interest. Although the stated interest rate on the mortgage notes is 9.02 percent, the results are the same as in example (1). There is no requirement that reimbursement for administrative costs must be stated separately as a finance fee; it may be included in interest.

(8) *Insurance.* (i) Premiums paid to insure a governmental issue are treated as interest paid on the issue, provided that the present value of the premiums is less than the present value of the interest reasonably expected to be saved as a result of the insurance.

(ii) In determining present value for purposes of this subparagraph, the yield on the governmental issue (determined

without regard to this subparagraph) shall be used as the discount rate.

(d) *Administrative costs and purchase price*—(1) *Treatment of administrative costs.* Despite anything in paragraph (c) to the contrary, administrative costs shall not be taken into account in determining yield on obligations.

(2) *Purchase price.* (i) If an issue of governmental obligations is sold to the public, the term "purchase price" means the initial offering price to the public (excluding bond houses, brokers, and other intermediaries).

(ii) If an issue of governmental obligations is privately placed, the purchase price of each obligation is the price paid by the first buyer of the obligation. For this purpose, the term "first buyer" does not include any bond house, broker, or other intermediary.

(iii) If the purchase price of an obligation is unreasonably low, then the yield on the obligation shall be determined as if its purchase price were equal to its fair market value on the date of issue.

(3) *Illustrations.* The following examples illustrate the application of this paragraph:

*Example (1).* On January 1, 1989, city A sells a $10 million issue of 10-year, 6-percent revenue bonds. The purchase price of the issue is $9,800,000. The yield on the revenue bonds is 6.27 percent. Administrative costs are not taken into account in determining yield.

*Example (2).* On January 1, 1990, city B sells $20 million of 5-percent general obligation bonds to underwriter X for $19,800,000. Underwriter X offers and sells the entire issue to the public at par. The purchase price of the issue is $20 million. The yield on the issue is 5 percent. The underwriter's spread is not taken into account in determining yield.

*Example (3).* On January 1, 1991, city C sells $12 million of revenue bonds and uses part of the proceeds to buy a 6-percent Treasury note at par. The yield on the Treasury note is 6 percent. Administrative costs are not taken into account in determining yield.

(e) *Exempt abritrage bonds for personnel of educational institutions*—(1) *In general.* Under section 103(c)(3), except as provided in subparagraph (3) of this paragraph, interest paid on an issue of arbitrage bonds is not includible in gross income if—

(i) The bonds are issued as part of an issue 90 percent of the proceeds of which are used to provide permanent financing for real property occupied or to be occupied for residential purposes by the personnel of an educational institution (within the meaning of section 170(b)(1)(A)(ii)) which grants baccalaureate or higher degrees or to replace funds which are so used, and

(ii) The yield on the bonds (computed in accordance with paragraphs (c) and (d) of this section) is not more than 1 percentage point lower than the yield on obligations acquired in providing such financing.

(2) *Other definitions.* The following definitions shall apply for purposes of this paragraph:

(i) The term "real property" means land or improvements thereon, such as buildings or other inherently permanent structures thereon (including items which are structural components of such buildings or structures). In addition, the term "real property" includes interests in real property. Local law definitions will not be controlling for purposes of determining the meaning of the term "real property" as used in section 103(c)(3) and this paragraph. The term includes items which are structural components of a building such as the wiring, plumbing systems, central heating or central air-conditioning machinery, pipes or ducts, and elevators or escalators installed in the building. The term also includes built-in air conditioners, stoves, refrigerators, and dishwashers, but does not include any other equipment or accessories which are not structural components of the building.

(ii) The term "personnel of an educational institution" means the personnel who are employed by the institution on a full-time basis for at least one semester even if such persons are also enrolled for a degree and take courses. The determination whether a person is employed on a full-time basis depends upon the customary practice of the educational institution.

(3) *Obligations held by substantial users or related persons.* Subparagraph (1) of this paragraph shall not apply to any bond for any period during which it is held by a person who is a substantial user of the real property financed by the proceeds of the issue of which it is a part or by a member of the family (within the meaning of section 318(a)(1)) of any such person. A person is a substantial user of such real property if he occupies such property for any period in excess of 3 months.

(f) *Allocations of investments and expenditures*—(1) *In general.* A State or local governmental unit shall allocate the cost of its acquired obligations to the unspent proceeds of each issue of governmental obligations issued by such unit. Unspent proceeds of an issue are the proceeds of such issue minus expenditures made with such proceeds other than amounts expended on acquired purpose or nonpurpose obligations. In cases where any such expenditure is made from the proceeds of several issues of governmental obligations or from several types of proceeds, such expenditure shall be allocated among such proceeds. Allocations under this paragraph may be made at any time and under any reasonable method chosen by the State or local governmental unit, provided that the method of allocation satisfies the requirements in subparagraph (4) of this paragraph.

(2) *Repayments of principal.* Repayments of principal on acquired obligations are a reduction in the allocable cost of such acquired obligations. Repayments of principal on acquired purpose obligations are a reduction in the amount of unspent proceeds to which such principal was allocated.

(3) *Time or demand deposits.* The cost of a time or demand deposit may be allocated to the proceeds of an issue of governmental obligations to the extent that such time or demand deposits are maintained for the purposes for which the proceeds of such governmental obligations may be expended (including as a purpose any investments in a reserve or replacement fund). Thus, for example, if authority A, having one issue of governmental obligations outstanding, has a checking account which on January 1, 1984, reflects a balance of $500,000, and if such authority's records show that $200,000 of such balance are proceeds of an outstanding issue of governmental obligations which are to be used to pay construction costs on the project financed with the proceeds of such issue, then authority A may allocate $200,000 of such account to the outstanding issue of governmental obligations.

(4) *Requirements.* (i) All allocations made under this paragraph must be consistent with one another.

(ii) Obligations purchased with the original proceeds of a refunding issue must be allocated to such proceeds.

(iii) Obligations not purchased with original proceeds of a refunding issue may not be allocated to such proceeds.

(iv) Obligations purchased with amounts treated as proceeds under § 1.103–13(g) (relating to invested sinking funds) must be allocated to such amounts.

(v) If any obligation is allocated to two or more sources of funds, each receipt of principal or interest on the obligation must be allocated ratably among the several sources of funds. (See

examples (4) and (5) of subparagraph (5) of this paragraph.)

(5) *Examples.* The following examples illustrate the application of this paragraph.

*Example (1).* On January 1, 1984, authority B issues a $10 million government obligation at a premium of $500,000 for the purpose of purchasing home loans. Authority B expects that prior to September 1, 1984, it will have expenditures and receipts with respect to the issue as follows:

| Date | Expenditure | Receipt | Explanation |
|---|---|---|---|
| 1-1-84 | $50,000 | | Issuing expenses. |
| 2-1-84 | 1,000,000 | | Treasury obligations. |
| 3-1-84 | 8,000,000 | | Housing loans. |
| 6-1-84 | 500,000 | | Debt service paid with bond proceeds. |
| 8-1-84 | | $20,000 | Interest on Treasury obligation. |
| 8-1-84 | | 50,000 | Repayment of principal on Treasury obligation. |
| 9-1-84 | | 200,000 | Interest on loans. |
| 9-1-84 | | 10,000 | Repayment of principal on housing loans. |

When computing the allocable proceeds of the issue as of September 1, 1984, authority B expects to reduce the $10,500,000 original proceeds by the following amounts:

| | |
|---|---|
| Issuing expenses | $50,000 |
| Debt service | 500,000 |
| Repayment of principal on housing loans | 10,000 |
| Total | 560,000 |

The following receipts result in an increase in allocable proceeds:

| | |
|---|---|
| Interest on Treasury obligations | $20,000 |
| Interest on loans | 200,000 |
| Total | 220,000 |

Thus, the $10,500,000 original proceeds will be decreased as of September 1, 1984, by a net amount of $340,000, and on such date the amount of allocable proceeds is $10,160,000. The investment in housing loans and Treasury obligations does not decrease unspent proceeds since the investment is for acquired purpose and acquired nonpurpose obligations. The repayment of principal on the Treasury obligations does not increase unspent proceeds. The repayment of principal on the housing loans reduces the amount of unspent proceeds. The repayments of principal on the housing loans and the Treasury obligations reduce the allocable cost of the acquired obligations. Thus, on September 1, 1984, authority B will have $950,000 in Treasury obligations and $7,990,000 in housing loans which may be allocated to the unspent proceeds of the governmental obligations.

*Example (2).* On January 1, 1984, city C issues a 10-year 5 million dollar revenue bond issue with a yield of 5 percent for the purpose of constructing a revenue producing facility. City C expects to receive, by January 1, 1988, proceeds from the issue as follows:

| | |
|---|---|
| Proceeds from bond sales | $5,000,000 |
| Investment proceeds | 500,000 |
| Total | 5,500,000 |

The city expects expenditures, by January 1, 1988, with regard to the issue as follows:

| | |
|---|---|
| Issuing expenses | $25,000 |
| Construction expenses | 3,750,000 |
| Debt service paid with bond proceeds | 250,000 |
| Total qualifying expenditures | 4,025,000 |
| Debt service paid with revenues | 500,000 |

On January 1, 1988, city C has $1,475,000 in proceeds which have not been expended on either the project or debt service. (The debt service paid with revenues was not paid with proceeds of the issue and thus does not decrease proceeds.) On January 1, 1988, city C has a reserve or replacement fund for this issue (as described in § 1.103–14(d)) in the amount of $750,000. Also, $50,000 of the investment proceeds are invested for a temporary period (as described in § 1.103–14(b)(6)). As of January 1, 1988, the city may allocate to the proceeds of the issue $675,000 in acquired obligations which do not have a materially higher yield. Furthermore, the city may allocate to the proceeds of the issue $800,000 in acquired obligations with a materially higher yield.

*Example (3).* On January 1, 1984, city C expects that on January 1, 1988, its records will show the following information regarding the city's outstanding issues of governmental obligations, including the issue of obligations described in example (2):

**Governmental Obligations**

| Date of issue | Yield | Proceeds which may be used to acquire materially higher yield acquired obligations | Proceeds which may be used to acquire obligations which do not have a materially higher yield |
|---|---|---|---|
| 3-5-65 | 4.3 | | |
| 12-13-79 | 7.7 | | |
| 5-6-80 | 6.1 | $475,000 | $525,000 |
| 6-10-81 | 5.3 | 950,000 | 1,200,000 |
| 1-1-84 | 5.0 | 800,000 | 675,000 |
| Total | | 2,225,000 | 2,400,000 |

Assume that the issue of December 13, 1979, is an issue of taxable industrial development bonds. City C may allocate its acquired obligations using any method it chooses. For January 1, 1988, city C chooses to allocate its acquired obligations as follows:

**Acquired Obligations**

| Yield | Cost of acquired obligations | Allocated to issue of May 6, 1980 | Allocated to issue of June 10, 1981 | Allocated to issue of Jan. 1, 1984 |
|---|---|---|---|---|
| 8.0 | $2,500,000 | | | |
| 4.0 | 500,000 | | | $500,000 |
| 0 | 250,000 | $250,000 | | |
| 7.5 | 1,000,000 | 275,000 | | |
| 5.0 | 1,000,000 | | $1,000,000 | |
| 5.3 | 500,000 | | 200,000 | 175,000 |
| 7.0 | 125,000 | | | |
| Total | 5,875,000 | 525,000 | 1,200,000 | 675,000 |

City C also allocates $2,225,000 of acquired obligations to the $2,225,000 in proceeds of issues which may be used to acquire materially higher yield acquired obligations. The $250,000 acquired obligation allocated to the May 6, 1980, issue is a noninterest bearing cash deposit which the city maintains as a replacement fund for the project which was constructed with the proceeds of that issue. It is unnecessary to make any further allocations because the obligations issued on March 5, 1965, are not subject to the provisions of section 103(c), since they were not issued after October 9, 1969, and the obligations issued December 13, 1979, are taxable industrial development bonds.

*Example (4).* On February 1, 1980, county T issues series A revenue bonds and series B special obligation bonds in the full cash defeasance of a prior issue. $40,000 of proceeds of the series A issue and $60,000 of proceeds of the series B issue are used together to purchase an acquired obligation. County T allocates interest with a present value of $60,000 to the series B issue and the remaining interest and principal to the Series A issue. This allocation is improper. Instead, county T must allocate 40 percent of each payment of principal or interest on the acquired obligation to the series A issue and 60 percent of each such payment to the series B issue; no other allocation is permitted.

*Example (5).* On February 1, 1980, city A issues $10 million of revenue bonds for the purpose of constructing a water treatment facility. On the same day, city A purchases an acquired obligation for $1 million. Two hundred thousand dollars of the acquired obligation is allocated to proceeds of the revenue bonds that are held in a reserve fund and invested at an unrestricted yield (see § 1.103–14(d)), $700,000 of the acquired obligation is allocated to proceeds of the revenue bonds that are invested at a restricted yield, and the remaining $100,000 is allocated to other funds (which are not proceeds of the revenue bonds). Of each payment of principal and interest on the acquired obligation, city A must allocate 20 percent to the bond proceeds that are invested at an unrestricted yield, 70 percent to the bond proceeds that are invested at a restricted yield, and 10 percent to the other funds.

(g) *Invested sinking funds*—(1) *In general.* Amounts held in a sinking fund for an issue (and receipts from investment of the sinking fund) are treated as proceeds of the issue.

(2) *Sinking fund.* The term "sinking fund" includes a debt service fund, redemption fund, reserve fund, replacement fund, or any similar fund, to the extent that the issuer reasonably expects to use the fund to pay principal or interest on the issue.

(3) *Withdrawals.* Amounts withdrawn from a sinking fund are not treated as proceeds under this paragraph after they are withdrawn.

(4) *Prior issue.* Original proceeds, investment proceeds, and transferred proceeds of a prior issue are not treated as proceeds of a refunding issue under this paragraph. See, however, § 1.103–14(e)(2)(ii) for rules relating to transferred proceeds.

(5) *Other proceeds.* Amounts treated as proceeds of an issue under § 1.103–13(b)(2) (relating to original proceeds and investment proceeds) are not treated as proceeds of the issue under this paragraph.

(6) *Allocation.* A sinking fund for two or more issues must be allocated between the issues either—

(i) In proportion to their original face amounts, or

(ii) According to the total amount of debt service on the issues that will actually be paid from the sinking fund.

(7) *Illustrations.* The following examples illustrate the application of this paragraph:

*Example (1).* On January 1, 1989, city A sells $8 million of general obligation bonds at par. All the proceeds of the general obligation bonds will be spent before January 1, 1990, to build a new library. Beginning on January 1, 1990, city A will make periodic deposits into a sinking fund for the general obligation bonds. The amount held in the sinking fund will increase until it equals $6 million on January 1, 2018, and then it will be used to retire all of the outstanding general obligation bonds. The first $1.2 million (i.e., .15×$8 million) accumulated in the sinking fund may be invested at an unrestricted yield pursuant to § 1.103–13(b)(1)(ii) (relating to the major portion test). Except as provided in § 1.103–14(d) (relating to temporary periods), none of the remainder may be invested at a yield that is materially higher (within the meaning of § 1.103–13(b)(5)(vii)) than the yield on the general obligation bonds.

*Example (2).* The facts are the same as in example (1). In addition, city A establishes a bona fide debt service fund for the general obligation bonds. No amounts are held in the debt service fund longer than 13 months. The result is the same as in example (1).

(h) *Acquired program obligations*—(1) *General rule.* The term "acquired program obligations" means acquired purpose obligations that carry out the purpose of a governmental program described in subparagraph (2) of this paragraph.

(2) *Governmental programs.* A governmental program is described in this subparagraph if—

(i) The program involves the acquisition of acquired purpose obligations;

(ii) At least 90 percent of all such obligations acquired under the program, by amount of cost outstanding, are evidences of loans to a substantial number of persons representing the general public, loans to exempt persons within the meaning of section 103(b)(3), loans to provide housing and related facilities, or any combination of the foregoing;

(iii) At least 90 percent of all of the amounts received by the governmental unit with respect to obligations acquired under the program shall be used for one or more of the following purposes: To pay the principal or interest or otherwise to service the debt on governmental obligations relating to the governmental program; to reimburse the governmental unit, or to pay, for administrative costs of issuing such governmental obligations; to reimburse the governmental unit, or to pay, for administrative and other costs and anticipated future losses directly related to the program financed by such governmental obligations; to make additional loans for the same general purposes specified in such program; or to redeem and retire governmental obligations at the next earliest possible date of redemption; and

(iv) The program documents require that any person (or any related person, as defined in section 103(b)(6)(C)) from whom the governmental unit may, under the program, acquire obligations shall not, pursuant to an arrangement, formal or informal, purchase the governmental obligations in an amount related to the amount of the obligations to be acquired under the program from such person by the governmental unit.

(3) *Examples.* The following examples illustrate governmental programs described in subparagraph (2) of this paragraph:

*Example (1).* State A issues obligations the proceeds of which are to be used to purchase certain home mortgage notes from commercial banks. The purpose of the governmental program is to encourage the construction of low income residential housing by creating a secondary market for mortgage notes and thereby increasing the availability of mortgage money for low income housing. Amounts received as interest and principal payments on the mortgage notes are to be used for one or more of the following purposes: (1) To service the debt on the governmental obligations, (2) to retire such obligations at their earliest possible date of redemption, and (3) to purchase additional mortgage notes. The governmental program is one which is described in subparagraph (2) of this paragraph.

*Example (2).* State B issues obligations the proceeds of which are to be used to make loans directly to students and to purchase from commercial banks promissory notes made by students as the result of loans made to them by such banks. The legislation authorizing the student loan program provides that the purpose of the program is to enable financially disadvantaged students to

continue their studies. The legislation also provides that purchases will be made from banks only where such banks agree that an amount at least equal to the purchase price will be devoted to new or additional student loans. The governmental program is one which is described in subparagraph (2) of this paragraph.

*Example (3).* Authority C issues obligations the proceeds of which are to be used to purchase land to be sold to veterans. The governmental unit will receive purchase-money mortgage notes secured by mortgages on the land from the veterans in return for such land. The purpose of the program is to enable veterans to acquire land at reduced cost. Amounts received as interest and principal payments on the mortgage notes are to be used for one or more of the following purposes: (1) To pay the administrative costs directly related to the program, (2) to service the debt on the governmental obligations, (3) to retire such governmental obligations at their earliest possible call date, and (4) to purchase additional land to be sold to veterans. The governmental program is one which is described in subparagraph (2) of this paragraph.

(i) [Reserved.]

(j) *Artifice or device.* If an artifice or device is employed in connection with the issuance of a governmental obligation, such obligation will be considered an arbitrage bond within the meaning of section 103(c)(2). For purposes of this section, the term "artifice or device" means a transaction or series of transactions that attempts to circumvent the provisions of section 103 (c), this section, § 1.103–14, or § 1.103–15—

(1) Enabling the issuer to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and

(2) Increasing the burden on the market for tax-exempt obligations.

Examples of increased burdens on the market for tax-exempt obligations include selling obligations that would not otherwise be sold, selling more obligations than would otherwise be necessary, and issuing obligations sooner or allowing them to remain outstanding longer than would otherwise be necessary. In no case shall it be considered an artifice or device to invest bond proceeds (or amounts treated as bond proceeds) at a materially higher yield if specifically provided for in section 103(c)(4). The provisions of this paragraph may be illustrated by the following examples:

*Example (1).* Authority E decides to refund certain revenue bonds. However, E intentionally delays the issuance of the refunding bonds until 2 years before the call date of the refunded bonds in order to take advantage of the 2-year temporary period provided by § 1.103–14(e)(3)(ii)(B). The ability of authority E to invest proceeds of the refunding issue at a materially higher yield during the temporary period makes this refunding more attractive than would be the case if such investment were not permitted. Authority E's decision to delay the issuance of the refunding bonds to take advantage of this temporary period is not an artifice or device within the meaning of this paragraph because investment of bond proceeds at a materially higher yield during a temporary period is specifically provided for in section 103(c)(4). In addition, the purpose of the temporary period in § 1.103–14(e)(3)(ii)(B) is to encourage issuers to delay advance refundings until later in the term of the prior issue.

*Example (2).* On January 1, 1981, authority K sells $1 million of 40-year industrial development bonds at par. The proceeds of the industrial development bonds will be needed to make a $1 million loan to corporation X for 5 years. When the principal of the loan is repaid on January 1, 1986, authority K will invest this sum in Treasury bonds at a yield that is materially higher than the yield on the industrial development bonds. By selling bonds with a term that is 35 years longer than necessary, authority K has attempted to use an artifice or device to defeat the purpose of section 103(c).

*Example (3).* On January 1, 1981, city L sells $10 million of tax anticipation notes. For purposes of determining the cumulative cash flow deficit on January 1, 1982, city L assumes that the amount of its anticipated expenditures for the month of January 1982 is reasonably required as a cash balance. See § 1.103–14(c)(2). City L conducts no investigation into its actual cash balance requirements. Therefore, city L is unable to ascertain whether 1 month's expenditures is, in fact, a reasonable balance. City L has not used an artifice or device in connection with the tax anticipation notes. The purpose of the 1-month figure in § 1.103–14(c)(2)(ii) is to eliminate the need for city L to conduct an investigation of its cash balance requirements.

*Example (4).* On January 1, 1983, city M sells $10 million of 6-percent refunding bonds. The proceeds of the refunding bonds will be held in escrow until they are used to pay principal and interest on a 3-percent prior issue. Although the prior issue is callable at par, it will be left outstanding until maturity. Moreover, amounts held in the escrow will be invested at a yield of 6 percent. Based on these facts, city M has not used an artifice or device. It has allowed the 3-percent prior issue to remain outstanding merely because it would be unwise to buy back the prior issue at par. Further, city M does not stand to make any profit by exploiting the difference between taxable and tax-exempt interest rates.

### § 1.103–14 Temporary investments, reserve funds, and refunding issues.

(a) *Temporary investments*—(1) *In general.* Under section 103(c)(4)(A), an obligation shall not be treated as an arbitrage bond solely by reason of the fact that all or a portion of the proceeds of the issue of which such obligation is a part may be invested in materially higher yield acquired obligations for a temporary period until such time as such proceeds are used for the purpose for which such obligations were issued. Thus, the investment for such temporary period of the proceeds of an issue of governmental obligations in acquired obligations which produce a yield materially higher than the yield produced by such issue of governmental obligations will not cause such governmental obligations to be treated as arbitrage bonds. See paragraph (d) of this section for rules with respect to a reasonably required reserve, and see § 1.103–13(b)(1) for rules relating to the major portion test.

(2) *Multipurpose issues.* See § 1.103–13(b)(9) for rules regarding application of the temporary period requirements to an issue which finances two or more projects with different temporary periods.

(b) *Temporary period.*—(1) *In general.* Original proceeds and investment proceeds of an issue of governmental obligations that are invested in acquired obligations during a 3–year period (or the period determined under paragraph (b)(5) of this section) beginning on the date of issue are invested for a temporary period if the requirements of paragraph (b) (2), (3), and (4) of this section are satisfied. See paragraph (b)(6) for the temporary period relating to investment proceeds. This paragraph (b) does not apply in the case of an issue of obligations issued in anticipation of taxes or other revenues. See paragraph (c) of this section for rules relating to temporary periods for tax and other revenue anticipation notes.

(2) *Expenditure test.*—(i) An amount equal to 85 percent of spendable proceeds must be expended on the project or projects by the end of the period described in paragraph (b)(1) of this section which applies to the issue.

(ii) In the case of an election under § 1.103–13(b)(5)(i)(B) (relating to materially higher), 85 percent of spendable proceeds must be expended on the project or projects by the end of the 3–year period beginning on the date of issue and an amount equal to 95 percent of spendable proceeds must be expended on the project or projects by the end of the 4–year period beginning on the date of issue.

(iii) The term "spendable proceeds" means, in respect of an issue of governmental obligations, the original proceeds described in paragraph (b)(2)(i) of § 1.103–13 minus the sum of (A) the amount of any reasonably required reserve or replacement fund for the issue (within the meaning of paragraph

(d) of this section), (B) the excess of the amount of any original proceeds which, if invested, would be treated as less than a major portion of the proceeds (within the meaning of paragraph (b)(1) of § 1.103–13) over the amount determined under paragraph (b)(2)(iii)(A) of this section, and (C) the amount of any original proceeds expended within the temporary period (or the periods described in paragraph (b)(2)(ii) of this section) in payment of the debt service (i.e., principal, interest, or both) on such issue of governmental obligations to the holders of such obligations (as contrasted to a sinking fund payment).

(3) *Time test.* (i) Within 6 months after the date of issue of the governmental obligations, the State or local govenmental unit must incur a substantial binding obligation to commence or acquire the project or projects, whether or not identified on the date of issue, to be financed by the issue. If, however, there are good business reasons, other than arbitrage profit, for the issuer to delay incurring such substantial binding obligation, then the issuer may have a longer period, not to exceed a 1–year period from the date on which such govenmental obligations are issued.

(ii) A substantial binding obligation to commence exists on the date on which the issuer incurs a binding obligation to a third party involving a substantial expenditure for some part of the project, such as, for example, architectural or engineering services, land acquisition, site development, construction materials, or the purchase of equipment for the project, or, in the case of services, commits itself to make an equivalent expenditure for similar services by employees of the issuer.

(iii) A contract or commitment for services which otherwise meets the requirements of this subparagraph shall be considered binding notwithstanding that it is to be performed in several stages, each subsequent stage being conditioned on a new clearance.

(iv) The obligation may be binding by law or by custom and usage. Further, it may be subject to contingencies, provided that the contingencies are not within the issuer's control.

(v) A binding obligation to expend the lesser of (A) an amount equal to 2½ percent of that portion of the estimated total project cost financed by the issue of governmental obligations and by prior issues or (B) $100,000, shall be substantial.

(4) *Due diligence test.* After a substantial binding obligation to acquire or commence the project or projects is incurred (as described in paragrah (b)(3) of this section), work on or acquisition of the project or projects must proceed with due diligence to completion.

(5) *Exception.* (i) If investments of proceeds do not qualify as investments for a temporary period because the requirement of paragraph (b)(2)(i) of this section (relating to the expenditure test) is not satisfied, such investments shall nevertheless be considered to be for a temporary period if prior to the issuance of the governmental obligations the issuer demonstrates to the satisfaction of the Commissioner that, on the basis of facts, estimates, and circumstances in existence on the date of such issue, a longer temporary period is necessary.

(ii) In the case of an issue of governmental obligations issued to finance a construction project, if investments of proceeds do not qualify as investments for a temporary period because the requirement of paragraph (b)(2)(i) of this section (relating to the expenditure test) is not satisfied, such investments shall nevertheless be considered to be for a temporary period if the issuer certifies under § 1.103–13(a)(2)(ii) that on the basis of the facts, estimates, and circumstances in existence on the date of issue, a longer temporary period not exceeding a 5-year period beginning on the date of issue is necessary.

(6) *Investment proceeds.* Investment proceeds of an issue of governmental obligations that are invested during the period described in paragraph (b)(1) of this section during a 1-year period beginning on the date of the receipt of such investment proceeds are invested for a temporary period.

(7) *Replacement issue.* (i) In the case of a replacement issue of obligations (as defined in paragraph (b)(7)(ii) of this section) that replaces an earlier issue of obligations of the issuer, the period described in paragraph (b)(1) of this section for the replacement issue shall be reduced by a period equal to the period during which the obligations of the earlier issue were outstanding. See paragraph (e)(3) of this section for rules relating to temporary period for a refunding issue.

(ii) The term "replacement issue of obligations" means any obligations which are issued after the retirement of all or a portion of an earlier issue of obligations if the proceeds of such subsequently issued obligations—

(A) Are used to replace any proceeds of such earlier issue (or of such retired portion) which were not expended on the project for which such earlier issue was issued, and

(B) Are use for substantially the same project as was intended for such replaced and unexpended proceeds.

(8) *Invested sinking funds.* Thirty days is the temporary period for amounts treated as proceeds of an issue because they are accumulated in a sinking fund for the issue (see § 1.103–13(g)). The temporary period begins on the date of accumulation.

(9) *Interest.* Despite subparagraph (8) of this paragraph, one year is the temporary period for amounts received from investment of a sinking fund.

(10) *Debt service fund.* (i) Despite subparagraphs (8) and (9) of this paragraph, 13 months is the temporary period for amounts contributed to a bona fide debt service fund (as defined in § 1.103–13(b)(12)).

(ii) If a portion (but not all) of a fund satisfies the requirement of bona fide debt service fund, then that portion is allowed a 13-month temporary period under this subparagraph. However, the remainder of the fund is not allowed the 13-month temporary period. Thus, for example, assume that a single fund serves both as a bona fide debt service fund and as a reserve fund. The portion of the fund that serves as a bona fide debt service fund is allowed a 13-month temporary period under this subparagraph. However, the remainder of the fund is not allowed a temporary period of 13 months. If this subdivision applies, then the requirement for annual depletion in §1.103–13(b)(12) applies only to the portion of the fund that constitutes a bona fide debt service fund.

(11) *Revolving fund.* (i) The term "revolving fund" means a fund—

(A) That consists of receipts from the sale of property acquired with bond proceeds and payments of principal on acquired program obligations; and

(B) (*1*) That will be used for the acquisition of additional property or acquired program obligations, or

(*2*) Whose governing instrument requires the acquisition of additional property or acquired program obligations to the extent that suitable property or obligations are reasonably available.

(ii) For purposes of this subparagraph, the term "property" does not include securities (within the meaning of section 165(g)(2) (A) or (B)) or obligations (other than obligations described in section 103(a) (1) or (2)).

(iii) Despite subparagraphs (8) to (10) of this paragraph, the temporary period for amounts deposited in a revolving fund is 3 years from the date of deposit.

(12) *Certain new money issues.* (i) In addition to the other temporary periods

allowed by this paragraph, a sinking fund for an issue shall have a temporary period that—

(A) Begins on the date of issue, and

(B) Ends on the first call date (but not more than 10 years after the date of issue).

(ii) This subparagraph does not apply to an issue unless the issuer makes a reasonable effort to schedule payment of as much debt service as is practicable in each year before the first call date. Thus, nothing in this subparagraph implies that the use of a sinking fund to postpone the maturity of bonds will not be treated as an artifice or device under § 1.103–13(j). On the other hand, use of the temporary period allowed by this subparagraph is not, in and of itself, an artifice or device.

(iii) This subparagraph does not apply to a refunding issue unless the prior issue had a term of less than 3 years and was issued in anticipation of permanent financing.

(iv) Despite subdivision (iii) of this subparagraph, the term of the prior issue may be longer than 3 years if the issuer demonstrates to the satisfaction of the Commissioner, prior to the issuance of the permanent financing, that a longer period of time was necessary.

(v) If this subparagraph applies to a refunding issue, then the 10-year limit in subdivision (i)(B) shall be reduced by the term of the prior issue.

(vi) The following example illustrates the application of this subparagraph:

*Example.* On January 1, 1980, housing authority A issues $4 million of bond anticipation notes. The bond anticipation notes have a term of 5 years. On January 1, 1980, authority A reasonably expects to roll the notes over into permanent financing within 3 years. However, due to unexpected difficulties, authority A is unable to issue permanent financing until July 1, 1984. Assume that, prior to July 1, 1984, authority A demonstrates to the satisfaction of the Commissioner that a term of 4½ years was necessary for the temporary financing. Unless subdivision (ii) of this subparagraph applies, amounts accumulated in a sinking fund for the permanent financing will be allowed a temporary period beginning on July 1, 1984, and ending on the first call date. However, this temporary period may in no event exceed 5½ years (i.e., 10 years minus 4½ years).

(13) *Reserve or replacement funds.* (i) In addition to the other temporary periods allowed by this paragraph, where an issuer has applied for a ruling that a reserve or replacement fund is necessary under paragraph (d)(2) or (e)(5)(iii) of this section, any amount in excess of the amount provided in paragraph (d)(1) of this section shall have the temporary period allowed under subdivision (ii) of this subparagraph.

(ii) The excess amount described in subdivision (i) shall have a temporary period that—

(A) Begins on the date of issue, and

(B) Ends 30 days after the earlier of: (*1*) the date the ruling is issued (whether favorable or unfavorable), (*2*) the date the request for such ruling is withdrawn, or (*3*) the date such request is administratively closed by the Internal Revenue Service.

(iii) This subparagraph does not apply unless the ruling request is made at least two weeks prior to the issuance of the governmental obligations, is made in good faith, and satisfies the procedural requirements of § 601.201 (Statement of Procedural Rules).

(14) *Methods of accounting.* For purposes of this paragraph, the issuer may account for a sinking fund in any reasonable manner. Thus, for example, the issuer may use the first-in-first-out method or the last-in-first-out method. Further, if net revenues for any bond year equal or exceed debt service, then the issuer may assume that current debt service is paid entirely from current revenues.

(15) *Illustrations.* The following examples illustrate the application of this paragraph:

*Example (1).* (a) On September 1, 1980, city W sells a $2 million 20-year issue of 6-percent special assessment bonds. The original proceeds of the issue amount to $1,950,000. Of this amount, $60,000 will be used to make the first payment of interest, $140,000 will be deposited in a reasonably required reserve fund, and the remainder will be used to pave streets.

(b) Persons who own property in city W will be subject to a special assessment totaling $2 million. Each property owner will be required to pay his share of the special assessment in equal annual installments due on August 1 over the next 20 years. The special assessment may be prepaid at any time. However, if the special assessment is not prepaid, then the outstanding balance of the assessment will bear interest at 6 percent, due on August 1 of each year.

(c) $100,000 of the special assessment bonds will mature on September 1 of each year 1981 to 1990. In addition, $1 million of term bonds will mature on September 1, 2000. The term bonds are callable at par beginning on September 1, 1990.

(d) City W will accumulate prepayments of the special assessment in a sinking fund until September 1, 1990. At that time, all amounts in the sinking fund will be used to call term bonds due in the year 2000.

(e) Based on these facts, city W's sinking fund is allowed a 10-year temporary period that ends on September 1, 1990. See subparagraph (12).

(f) After September 1, 1990, the sinking fund will be mandatory in character. All amounts deposited in the sinking fund will be used to call term bonds on September 1 of each year. Therefore, the sinking fund will serve merely as means to match revenues and debt service. Accordingly, amounts deposited in the sinking fund after September 1, 1990, will be allowed a 13-month temporary period under subparagraph (10).

*Example (2).* On July 1, 1981, authority X sells a $3 million 20-year issue of 6-percent school bonds. Authority X uses the original proceeds of the issue to build a school building and leases the building to school district Y. School district Y has general taxing powers. Under the terms of the lease, school district Y is unconditionally obligated to pay $130,000 on January 1 and July 1 of each year 1982 to 2002. These payments will be sufficient to enable authority X to pay level debt service and retire the school bonds over 20 years. Nevertheless, authority X will not pay any principal on the school bonds until July 1, 1991. Instead, authority X will deposit the excess of rents over interest in a sinking fund until July 1, 1991. Based on these facts, authority X will not make a reasonable effort to pay principal on the school bonds before July 1, 1991. Therefore, rents deposited in the sinking fund will be allowed a temporary period of only 30 days.

(c) *Tax and other revenue anticipation notes*—(1) *In general.* In the case of an issue of obligations issued in anticipation of taxes or other revenues, proceeds that are invested are an investment for a temporary period if such obligations—

(i) Will not be outstanding after (A) a period ending 13 months after the date on which such obligations are issued, (B) a period ending 60 days (but not more than 24 months after such obligations are issued) after the last date for payment without interest or penalty of the anticipated tax (or last installment thereof) imposed by an annual tax levy or the first year's tax (or last installment thereof) of the anticipated tax imposed by a levy for more than 1 year, or (C) in the case of obligations issued in anticipation of governmental grants or advances and not in anticipation of taxes or revenues from other sources, a period ending 6 months after the date on which the issuer expects to receive such grants or advances (but not more than 30 months after such obligations are issued), and

(ii) Will not be issued in an amount greater than the maximum anticipated cumulative cash flow deficit to be financed by such anticipated tax or other revenue sources for the period for which such taxes or other revenues are anticipated and during which such obligations are outstanding.

(2) *Cumulative cash flow deficit.* For purposes of this subparagraph, the cumulative cash flow deficit at any time during a period is an amount equal to:

(i) The amount that the issuing State or local government unit will expend from the beginning of such period to such computation date to pay expenditures which would ordinarily be paid out of or financed by the anticipated tax or other revenues, plus

(ii) The amount reasonably required by the issuer as a cash balance on hand at all times (the amount of the anticipated expenditures for a period of 1 month from such time being deemed to be reasonably required for this purpose), minus

(iii) The sum of the amounts (other than the proceeds of the issue in question), whether in the form of cash, marketable securities, or otherwise which will be available for the payment of such expenditures from the beginning of such period to such time.

(3) *Amount available for payment.* For purposes of paragraph (b)(2)(iii) of this section, amounts in accounts will be considered to be available for the payment of such expenditures to the extent that such accounts may, without legislative or judicial action, be invaded to pay such expenditures without a legislative, judicial, or contractual requirement that such accounts be reimbursed.

(4) *Example.* The following example illustrates the provisions of this paragraph:

*Example.* County B plans to issue 13-month tax anticipation notes on July 1, 1981, in anticipation of income tax revenues in the amount of $4 million to be received on March 1, 1982, and real property tax revenues in the amount of $8 million to be received on May 1, 1982. Assume that all receipts will be received on the first day of each month. The maximum amount of such notes which may be issued pursuant to the provisions of subparagraph (3) of this paragraph may be determined in accordance with the following table on the basis of the facts assumed:

| | Estimated expenditures | Estimated receipts [1] | Cumulative surplus (or deficit) at end of month [2] |
|---|---|---|---|
| June | | | $2,000,000 |
| July | $750,000 | $40,000 | 1,290,000 |
| August | 900,000 | 36,450 | 426,450 |
| September | 1,100,000 | 32,132 | (641,418) |
| October | 1,250,000 | 26,782 | (1,864,636) |
| November | 1,000,000 | 20,576 | (2,844,060) |
| December | 800,800 | 15,779 | (3,627,281) |
| January | 1,100,000 | 11,858 | (4,716,000) |
| February | 1,280,994 | 6,417 | (6,000,000) |
| March | 1,000,000 | 4,020,000 | (2,980,000) |
| April | 1,535,100 | 15,100 | (4,500,000) |
| May | 975,000 | 8,475,000 | 3,000,000 |
| June | 1,515,000 | 15,000 | 1,500,000 |

[1] Tax receipts plus proceeds from investments.
[2] Does not include amount of reasonably required cash balance.

The maximum cumulative deficit is $7 million which occurs at the end of February (i.e., $6 million cumulative deficit at the end of February plus $1 million reasonably required as a cash balance on hand (the amount of the anticipated expenditures for March)). Thus, an investment of the proceeds of the county B notes will be an investment for a temporary period if such notes are not issued in an amount in excess of $7 million.

(d) *Reasonably required reserve or replacement fund*—(1) *In general.* Under section 103(c)(4)(B), an obligation shall not be treated as an arbitrage bond solely by reason of the fact that a portion of any proceeds of the issue of which such obligation is a part may be invested in materially higher yield acquired obligations which are part of a reasonably required reserve or replacement fund. Except as provided in subparagraphs (2) and (4) of this paragraph, a reserve or replacement fund will be considered to be reasonably required only if the amount so invested at any time during the term of the issue does not exceed 15 percent of the original face amount of the issue. If the original proceeds of an issue (determined without regard to issuing expenses) are less than 98 percent of the original face amount of such issue, then the percentage specified in the preceding sentence shall be based on the amount of such original proceeds. For the purpose of determining whether the amount invested exceeds the amount specified in the preceding sentence, the rules of § 1.103–13(b)(1)(ii) apply. A reasonably required reserve or replacement fund may consist of one or more funds, or portions of funds, however labeled, derived from one or more sources. Thus, for example, a sinking fund described in § 1.103–13(g)(2) might also be a reasonably required reserve or replacement fund.

(2) *Exception.* If an amount in excess of the amount provided in paragraph (d)(1) of this section is invested in a reserve or replacement fund, such excess will be considered to be invested in a reasonably required reserve or replacement fund if—

(i) The issuer applies for a ruling that the specified reserve or replacement fund is necessary, and

(ii) A ruling to that effect is subsequently issued to the governmental unit (before or after the date of issuance of the obligations).

The procedure set forth in the preceding sentence does not preclude an issuer from relying on a published ruling in which the Commissioner specifically designates a category of reserve or replacement funds as reasonably required.

(3) *Relationship to major portion test.* To the extent that proceeds of an issue of governmental obligations are invested at a materially higher yield in a reasonably required reserve or replacement fund, such proceeds are included as proceeds invested in materially higher yield acquired obligations for purposes of the major portion test in § 1.103–13(b)(1). Thus, if the sum of the proceeds invested in materially higher yield acquired obligations equals the maximum investment permitted under this paragraph, then the investment of any other proceeds in materially higher yield acquired obligations may cause the obligations of such issue to be arbitrage bonds.

(4) *Pledge of endowment.* Endowment funds of a college, university, or other similar institution (such as a hospital or charity) pledged as collateral for an issue will be considered to be a reasonably required reserve if the pledged funds:

(i) Were derived from gifts or bequests (including the income thereon);

(ii) Were not raised for the purpose of carrying out the project financed by the issue;

(iii) Are not reasonably expected to be used (directly or indirectly) to pay principal or interest on the issue; and

(iv) Are held as part of the institution's permanent capital.

The following example illustrates the application of this subparagraph:

*Example.* The health and educational facilities authority of State X ("the X authority") plans to issue long-term bonds to finance a new medical school building for college A. The bonds will be collateralized by a pledge of securities held by college A as quasi-endowment funds (funds functioning as endowment). In the financing agreement, college A represents that the pledged

securities are quasi-endowment funds derived from gifts or bequests (or the income therefrom) and that it will expend on the construction of the medical school building an amount equal to or greater than the amount of funds raised for the purpose of such construction (including amounts that it reasonably expects to receive in the future from pledges or otherwise), and no such funds will be pledged as collateral for the issue. Authority X is not aware of any facts or circumstances that would cause it to question the accuracy of the representations made by college A. In addition, on the basis of facts and estimates including projections indicating that revenues from other sources during the next 5 years will be more than sufficient to pay debt service on the issue, authority X does not reasonably expect that the pledged funds or the income therefrom will be required to make payment of principal or interest on the issue. Based on the reasonable expectations of authority X, the pledged funds satisfy the requirements of this paragraph. Authority X does not need a ruling under subparagraph (2) of this paragraph.

(5) *Certain mandatory accumulations.* A reserve fund for one or more issues is reasonably required if:

(i) Amounts must be paid into the fund under a constitutional provision, statute, or ordinance adopted before May 3, 1978;

(ii) Under the constitutional provision, statute, or ordinance, amounts paid into the fund (and receipts from investment of the fund) can be used only to pay debt service on the issues and for no other purpose; and

(iii) The size of the payments made into the fund is independent of the size of the outstanding issues (including the debt service thereon).

The following example illustrates the application of this subparagraph:

*Example.* (i) On June 30, 1979, city B in State A had on deposit in a general bond sinking fund cash and U.S. Government securities aggregating $21 million. The money in the general bond sinking fund was derived principally from a 6½ mill annual city ad valorem tax ("the general bond tax") that is now, and has been for over 50 years, required by the constitution of State A to be used and applied solely for payment of the principal of and the interest on city B's general bonds and that has been levied by city B for more than 50 years. A portion of the money in the general bond sinking fund was derived from the investment of money in the fund. The revenue derived by city B from the general bond tax is received on an annual basis as taxpayers pay their respective annual ad valorem tax. Substantially all such revenue is received by city B during the period from January 1 to January 31 in each year.

(ii) On July 1, 1979, city B created two new funds, a general bond debt service fund (which was created to achieve a proper matching of revenues and debt service within each calendar year) and a general bond reserve fund. Immediately thereafter, city B transferred from the sinking fund—

(1) To the debt service fund the sum of $2 million (an amount equal to the debt service maturing on city B's general bonds during the period July 1, 1979–December 31, 1979), and

(2) To the reserve fund the entire balance ($19 million) then remaining on deposit in the sinking fund.

after which the sinking fund was closed.

(iii) In each of the calendar years ending on December 31, 1980 and 1981, city B received from the general bond tax the sum of $5 million, which it applied (within 30 days after receipt) as follows:

| | Year ending December 31 | |
|---|---|---|
| | 1980 | 1981 |
| To the debt service fund | $3,925,000 | $3,840,000 |
| To the reserve fund | 1,075,000 | 1,160,000 |

(iv) The debt service (principal and interest) maturing with respect to city B's general bonds during each of such 2 years aggregated $4 million, and amounts on deposit in the debt service fund were during each of such years invested in U.S. Government securities. The cash flow of the debt service fund during each of such years, and during 1979, was as follows:

| | Year ending December 31 | | |
|---|---|---|---|
| | 1979 * | 1980 | 1981 |
| Balance at beginning of period | $2,000,000 | $75,000 | $160,000 |
| Receipts: | | | |
| General bond tax | 0 | 3,925,000 | 3,840,000 |
| Investment income | 75,000 | 160,000 | 160,500 |
| | 2,075,000 | 4,160,000 | 4,160,500 |
| Less expenditures: | | | |
| Debt service | 2,000,000 | 4,000,000 | 4,000,000 |
| Balance at end of period | 75,000 | 160,000 | 160,500 |

The entire amount expended from the debt service fund during each of such years was applied and used, on or before the end of each of such years, for payment of debt service on city B's general bonds. The balance remaining on deposit in the debt service fund at the end of each of such years was greater than one-twelfth of the debt service maturing with respect to city B's general bonds during the next succeeding calendar year (but not in excess of the annual earnings on the debt service fund).

(v) Amounts on deposit in the reserve fund during each of the years 1979, 1980, and 1981 were invested in U.S. Government securities. As a result of the transfers and payments into the reserve fund that are referred to in items (ii) and (iii) and the receipt of investment income from the reserve fund, the cash flow of the reserve fund for the years ending December 31, 1979, 1980, and 1981 was as follows:

| | Year ending December 31 | | |
|---|---|---|---|
| | 1979 * | 1980 | 1981 |
| Balance at beginning of period | $19,000,000 | $19,800,000 | $22,575,000 |
| Receipts: | | | |
| General bond tax | 0 | 1,075,000 | 1,160,000 |
| Investment income | 800,000 | 1,700,000 | 1,940,000 |
| Balance at end of period | 19,800,000 | 22,575,000 | 25,675,000 |

* For 1979, period was a 6-month one, beginning July 1, 1979.

(vi) City B did not issue any general bonds during the period May 3, 1978, through December 31, 1981. On January 1, 1982, city B issues and sells to underwriters (at par plus accrued interest) $15 million principal amount of general bonds ("the 1982 general bonds") maturing serially in the years 1985–2012. Immediately prior to the issuance of the 1982 general bonds, city B had outstanding $50 million principal amount of other general bonds, being the outstanding portions of issues aggregating $85 million in original principal amount, all of which were sold to underwriters at par plus accrued interest. Thus, immediately following the issuance of the 1982 general bonds, city B will have outstanding $65 million principal amount of general bonds, being the outstanding portions

of issues aggregating the $100 million in original principal amount.

(vii) Under the constitution of State A, amounts on deposit in the debt service fund and the reserve fund (and receipts from the investment of those funds) are available for payment of the principal of and the interest on all of city B's general bonds (including the 1982 general bonds and any other general bonds that city B may in the future issue) on a *pari passu* basis and can be used for no other purpose. While city B reasonably expects to use for payment of the principal of and the interest on its general bonds (including the 1982 general bonds) the money paid into the debt service fund out of proceeds to be derived from the levy of the general bond tax, it does not expect to use any of the money in the reserve fund for payment of such debt service except as follows:

(1) In calendar years 1982 to 1988, inclusive, the revenue to be received from the general bond tax are anticipated to be insufficient to pay maturing debt service on city B's outstanding general bonds (including the 1982 general bonds), and it will, it is expected, be necessary for city B to use money in the reserve fund to make up this anticipated deficit in general bond tax receipts;

(2) In other calendar years, it may be necessary to use income from the investment of reserve fund money to provide for payment of maturing debt service on city B's general bonds (including the 1982 general bonds); and

(3) In the case of other deficiencies (presently unanticipated) in current receipts from the general bond tax necessitating an "invasion" of the reserve fund.

City B expects to continue paying the entire proceeds from the general bond bond tax into the debt service fund and the reserve fund as during the years 1979–1981 except for such adjustments as are necessary to reflect (a) increases in debt service on its general bonds resulting from the issuance of the 1982 general bonds and (b) decreases in debt service on its general bonds resulting from retirement of principal of various outstanding series. In the years following the issuance of the 1982 general bonds, the balance on deposit in the reserve fund is expected to show moderate increases (except in the years 1982 to 1988, inclusive), while both the outstanding principal of city B's general bonds and the original principal amount of those thereof that are then outstanding are anticipated to decline. The money on deposit in the debt service fund and the reserve fund are expected continuously to be invested in taxable securities at a yield that will be materially higher than the yield on the 1982 general bonds.

(viii) Except for the debt service fund and the reserve fund, city B has no sinking or other similar fund that it reasonably expects to use for payment of the principal of or the interest on the 1982 general bonds, nor does it expect to create any such fund. While city B has pledged its full faith and credit for payment of the 1982 general bonds, it did not pledge therefor the debt service fund, the reserve fund, or any other specific revenues, funds, or assets of the city, except to the extent that the constitutional provision of State A, referred to in items (i) and (vii) above, may have itself effected or imposed a pledge of the debt service fund and the reserve fund for the benefit of the 1982 general bonds (and for all other general bonds of city B). While city B does not at the time it issues the 1982 general bonds have any present plans for issuing any further general bonds, nothing contained in any of the proceedings of city B relating to the 1982 general bonds imposes any restrictions on the issuance of further general bonds by city B. At the time the 1982 general bonds are issued, city B could, under its then applicable debt limit, issue up to $10 million principal amount of further general bonds without exceeding such debt limit.

(ix) Based upon the foregoing facts, the reserve fund established by city B is reasonably required under paragraph (d)(4) of this section.

(e) *Refunding issue*—(1) *In general.* This paragraph applies to refunding issues. The general rules regarding the temporary period (see paragraph (b) of this section), the reasonably required reserve or replacement fund (see paragraph (d) of this section), and the major portion test (see § 1.103–13(b)(1)) do not apply to a refunding issue except as provided in this paragraph. This paragraph does not apply to proceeds of a prior issue until they become "transferred proceeds" under the rules in subparagraph (2) of this paragraph.

(i) *Operating rules; temporary period.* (A) The rules in this subdivision apply solely for purposes of subparagraph (3) of this paragraph (relating to the temporary period).

(B) If two or more refunding issues are used to refund the same prior issue and if the refunding is in substance a single transaction, then the refunding issues are treated as a single issue.

(C) If a refunding issue is used to refund a portion (but not all) of the prior issue, then the refunded and nonrefunded portions of the prior issue are treated as separate issues.

(D) The following examples illustrate the application of this subdivision:

*Example (1).* City A has outstanding $10 million of noncallable 9-percent revenue bonds (the "prior issue") due on January 1, 1990. On January 1, 1980, city A issues $6 million of series A 6½-percent general obligation bonds and $4 million of series B 7-percent revenue bonds at par in a crossover refunding of the prior issue. For purposes of the temporary period rules in subparagraph (3), the two refunding issues are treated as a single issue.

*Example (2).* City B has outstanding $8 million of noncallable 9-percent revenue bonds (the "prior issue") due on January 1, 1990. On January 1, 1980, city A issues $3 million of 6⅝-percent refunding bonds at par in a crossover refunding of a portion of the prior issue. The remaining $5 million of the prior issue will be paid from revenues. Based on these facts, the prior issue is treated as two separate issues—one of $3 million and one of $5 million—for purposes of the temporary period rules in subparagraph (3).

*Example (3).* City C has outstanding $12 million of noncallable 9-percent revenue bonds (the "prior issue") due according to the following schedule:

[Dollars in millions]

| | |
|---|---|
| Jan. 1, 1981 | 2 |
| Jan. 1, 1982 | 4 |
| Jan. 1, 1983 | 6 |

On January 1, 1980, city C issues $2 million of series B 6½ percent general obligation bonds and $6 million of series A 7-percent guaranteed revenue bonds at par in a crossover refunding of two portions of the prior issue. The proceeds of the series B bonds will be used to pay the $2 million due on January 1, 1981, and the proceeds of the series A bonds will be used to pay the $6 million due on January 1, 1982 will be paid from revenues. For purposes of the temporary period rules in subparagraph (3), the series A and series B issues are treated as a single issue. In addition, the $8 million refunded portion and the $4 million nonrefunded portion of the prior issue are treated as separate issues.

(ii) *Operating rules; transferred proceeds, minor portion, and 4–R fund.* (A) The rules in this subdivision apply solely for purposes of subparagraphs (2), (4), (5), and (6) of this paragraph.

Subparagraphs (2), (4), (5), and (6) relate, respectively, to transferred proceeds, the major portion test, the reasonably required reserve or replacement fund, and the adjusted maturity date.

(B) If the proceeds of a refunding issue are used to refund two or more prior issues, then the portion of the proceeds used to refund each prior issue is treated as a separate refunding issue.

(C) If a refunding issue is used to refund a portion (but not all) of a prior issue, then:

(1) The refunded and nonrefunded portions of the prior issue are treated as separate issues,

(2) Unspent proceeds of the prior issue must be allocated ratably between the separate issues, and

(3) If any unspent proceeds of the prior issue are invested at an unrestricted yield pursuant to paragraph (d) of this section or § 1.103–13(b)(1)(ii), those proceeds must be allocated ratably between the separate issues.

(D) Notwithstanding subdivision (ii)(C) of this subparagraph, if a series B issue is used together with one or more series A issues in a gross refunding of a prior issue and if the requirements of § 1.103–15(c)(2) (i), (ii), (iii), and (iv) are satisfied, then:

(1) Each portion of the prior issue that is refunded by one of the series A issues is treated as a separate issue,

(2) All unspent proceeds of the prior issue must be allocated ratably among the separate issues,

(3) If any unspent proceeds of the prior issue are invested at an unrestricted yield pursuant to paragraph (d) of this section or § 1.103–13(b)(1)(ii), those proceeds must be allocated ratably among the separate issues, and

(4) None of the unspent proceeds of the prior issue may be allocated to any portion of the prior issue that is refunded by the series B issue.

For purposes of this subdivision, the terms "series B issue" and "series A issues" have the same meaning as in § 1.103–15(c).

(E) The following examples illustrate the application of this subdivision:

*Example (1).* City E has outstanding $10 million of noncallable 9-percent revenue bonds and $5 million of noncallable 8-percent revenue bonds due on January 1, 1990. On January 1, 1983, city E issues $15 million of 6-percent general obligation bonds at par in a crossover refunding of both issues of revenue bonds. Under this subdivision, the refunding issue is treated as two separate issues—one of $10 million and one of $5 million.

*Example (2).* The facts are the same as in example (1) of subdivision (i) (D) of this subparagraph. Under this subdivision, the prior issue is treated as two separate issues—one $6 million issue ("issue p-1") that is refunded by the series A bonds and one $4 million issue ("issue p-2") that is refunded by the series B bonds. Assuming that $1 million of the proceeds of the prior issue remain unspent on January 1, 1980, $600,000 of these unspent proceeds must be allocated to issue p-1 and the remaining $400,000 must be allocated to issue p-2. Assuming further that $500,000 of the unspent proceeds of the prior issue are invested at an unrestricted yield in a replacement fund, $300,000 of these proceeds must be allocated to issue p-1 and the remaining $200,000 must be allocated to issue p-2.

*Example (3).* The facts are the same as in example (2) of this subdivision, except that the prior issue will be retired serially. The result is the same except that issues p-1 and p-2 may be further subdivided under subparagraph (6) of this paragraph (relating to adjusted maturity date).

*Example (4).* The facts are the same as in example (2) of subdivision (i) (D) of this subparagraph. Under this subdivision, the prior issue is treated as two separate issues—one $3 million issue that is refunded and one $5 million issue that is not refunded.

*Example (5).* The facts are the same as in example (3) of subdivision (i) (D) of this subparagraph. Under this subdivision, the prior issue is treated as three separate issues—one $2 million issue that is refunded by the series A bonds, one $4 million issue that is not refunded, and one $6 million issue that is refunded by the series B bonds.

*Example (6).* The facts are the same as in example (4) of § 1.103–15(j). As a result of this subdivision, all unspent proceeds of the prior issue would become transferred proceeds of the series A issue, and none would become transferred proceeds of the series B issue. The result would be the same even if some of the proceeds of the series B issue were used to pay principal on the prior issue.

(2) *Definition.* (i) A refunding issue is an issue of governmental obligations the proceeds of which are used to pay any principal or interest on any other issue of governmental obligations (hereinafter referred to as the "prior issue"). The "refunding issue" and "prior issue" must be issued by the same governmental unit or the "prior issue" may be issued by a governmental unit that is included within the governmental unit that issues the refunding issue. The use of proceeds of an issue of governmental obligations within 1 year after the date of issue of such issue to pay interest on other governmental obligations need not be treated as the refunding of a prior issue unless the principal of the other governmental obligations is also refunded. In addition, the use of proceeds of an issue to pay certain capitalized interest (as defined in paragraph (e)(2)(iii) of this section) on a prior governmental issue need not be treated as the refunding of such prior issue. An issue of obligations to which paragraph (c) of this section applies issued in anticipation of revenues to finance annual budget expenses of the issuer (including supplemental appropriations and other expenses) shall not be treated as a refunding issue unless issued to refund a prior issue of obligations of such issuer issued in anticipation of revenues for the same budget period.

(ii) At the time that proceeds of the refunding issue discharge the outstanding principal of the prior issue, proceeds of the prior issue become proceeds of the refunding issue (hereinafter referred to as "transferred proceeds") and cease to be proceeds of the prior issue. In the case of a discharge of a portion of such principal, the amount of proceeds of the prior issue that become transferred proceeds is an amount which bears the same relationship to the total proceeds of such prior issue at the time of such discharge as the amount of such discharged principal bears to the total principal of the prior issue outstanding immediately prior to such discharge. In the case of a refunding issue, as the proceeds of the prior issue become transferred proceeds, those proceeds of the prior issue which are invested in materially higher yield obligations pursuant to the provisions of paragraph (d) of this section or § 1.103–13(b)(1)(ii) shall become transferred proceeds ratably. Generally, it is not necessary to apply the preceding two sentences for purposes of § 1.103–14(e)(4) and (5). (This is because of § 1.103–14(e)(6), which treats different parts of the prior issue as separate issues.)

(iii) For purposes of paragraph (e)(2)(i) of this section, interest on a prior governmental obligation shall be treated as capitalized interest if such interest accrues within the period of time necessary to complete the construction or the acquisition of the project for which such prior issue was issued plus 1 year thereafter. In lieu of the 1 year

referred to in the preceding sentence, there may be substituted a period not longer than 5 years if, prior to the issuance of the obligations the proceeds of which are used to pay interest on a prior issue of obligations, the issuer demonstrates to the satisfaction of the Commissioner that because of inadequate revenues during the period of commencement of operations of the project such interest should be treated as capitalized interest. For example, if a first issue is issued on January 1, 1986, to provide funds to construct a hospital and it is necessary to issue a second issue on January 1, 1989, to provide additional funds to complete construction of the hospital, the use of any proceeds of the second issue to pay interest on the first issue during the period needed to complete construction of the hospital, plus one year thereafter, need not be treated as a refunding of the first issue. However, if the hospital had been completed on January 1, 1989, and a second issue is issued on January 1, 1991, both to provide funds for a new wing for the hospital and to pay interest on the 1986 issue, interest on the first issue is not treated as capitalized interest unless the issuer demonstrates that there are not sufficient revenues from the hospital (without regard to any revenues or losses from the new wing) to pay the interest on the first issue accruing during the period beginning January 1, 1989 and ending not later than January 1, 1994.

(iv) Despite § 1.103–14(e)(2)(ii), the term "transferred proceeds" does not include amounts treated as proceeds of the prior issue under § 1.103–13(g) (relating to invested sinking funds).

(3) *Temporary period.* (i) Proceeds (other than transferred proceeds) of a refunding issue that are invested for a period described in paragraph (e)(3)(ii) of this section are invested for a temporary period. Paragraph (e)(3)(ii) (B) and (C) of this section applies only if the period beginning on the date of issue and ending on the date of discharge of the last obligation of the prior issue is not longer than the period determined under such paragraph. Except as provided in the preceding sentence, the issuer shall be allowed the longer of the temporary periods determined under paragraph (e)(3)(ii) (A) or (B) or (at the issuer's option) the temporary period determined under paragraph (c)(3)(ii)(C). This subparagraph (except for subdivision (viii) and (ix)) does not apply to amounts treated as proceeds under § 1.103–13(g) (relating to invested sinking funds). For the temporary period for an invested sinking fund, see § 1.103–14(b) (8) to (12).

(ii) The periods provided by this subdivision are—

(A) A 30-day period beginning on the date of issue;

(B) A period which is not in excess of the shortest of—

(*1*) A period beginning on the date of issue and ending on the date on which the last obligation of the prior issue is discharged,

(*2*) 2 years,

(*3*) A period equal to 25 percent of the term of the refunding issue,

(*4*) A period equal to the greater of—

(*i*) 50 percent of the term of the prior issue, but not more than 6 months, or

(*ii*) 25 percent of the term of the prior issue, or

(*5*) In case of a refunding issue which is part of a series of refunding issues, where a refunding issue is refunded by a refunding issue, 2 years reduced by the sum of all temporary periods for all prior refunding issues in such series to which this subdivision (ii)(B) or paragraph (e)(3)(ii)(C) of this section applied. See paragraph (e)(3)(ii)(C)(*3*) of this section for the application of this subdivision (ii)(B)(*5*) to a refunding issue described in paragraph (e)(3)(ii)(C)(*1*) of this section.

(C)(*1*) In the case of a refunding issue for which different temporary periods under paragraph (e)(3)(ii) (A) or (B) of this section would apply to portions of such issue because

(*i*) Proceeds of the refunding issue are used to pay principal or interest on two or more prior issues, or

(*ii*) One or more portions of the issue is part of a series of refunding issues under paragraph (e)(3)(ii)(B)(*5*) of this section,

(*2*) the period described in paragraph (e)(3)(ii)(C)(*2*) of this section.

(*2*) The period described in this subdivision (ii)(C)(*2*) is a period determined by (*i*) multiplying the number of months (rounded to at least one decimal point) or days in the period determined under paragraph (e)(3)(ii) (A) or (B) of this section (determined without regard to paragraph (e)(3)(ii)(B)(*1*) of this section and without regard to any allocation under paragraph (e)(3)(ii)(C)(*3*) of this section with respect to such issue) for each such portion of the refunding issue by the amount of principal and interest of the prior issue discharged by each such portion and (*ii*) dividing the sum of the amounts determined under paragraph (e)(3)(ii)(C)(*2*)(*i*) of this section by the total amount of principal and interest to be refund by all portions of the refunding issue.

(*3*) In the case of the refunding of any prior issue to which this subdivision (ii)(C) applied, the reduction referred to in paragraph (e)(3)(ii)(B)(*5*) of this section for the temporary period for such prior issue shall be the temporary period of the issue determined under this subdivision (ii)(C) rather than the periods under paragraph (e)(3)(ii) (A) or (B) of this section used in determining the temporary period of the issue under this subdivision (ii)(C). Because of the application of this subdivision (ii)(C) to a refunding issue, the sum of the temporary period for a portion of such issue and all prior temporary periods under paragraph (e)(3)(ii) (B) or (C) of this section for such portion may exceed 2 years. If such sum exceeds 2 years then, for purposes of determining the amount of the reduction under paragraph (e)(3)(ii)(B)(*5*) of this section for the portions of such issue in which the sum of temporary periods does not exceed 2 years, the temporary period determined under this subdivision (ii)(C) for such other portions shall be increased by a period determined by multiplying such excess by a fraction the numerator of which is the amount of principal and interest to be discharged by the portion exceeding 2 years and the denominator of which is the amount of remaining principal and interest to be discharged by all other portions of such issue. If the temporary period in paragraph (e)(3)(ii)(A) of this section is used for any portion of the issue in determining the temporary period of the issue under this subdivision (ii)(C), and the temporary period under paragraph (e)(3)(ii)(B)(*5*) of this section for such portion is a period shorter than 31 days, then, for purposes of the preceding sentence, the excess shall be the period by which the temporary period under this subdivision (ii)(C) for such issue exceeds 30 days. If, as a result of any increase under this subdivision (ii)(C)(*3*), the cumulative temporary period for another portion exceeds 2 years, such excess shall also be allocated in accordance with this subdivision (ii)(C)(*3*).

(iii) Proceeds to which any temporary period provided in paragraph (b) of this section for the prior issue applied (or to which any temporary period would apply if such prior issue had been issued after October 9, 1969) which become transferred proceeds and are invested during the period beginning on the date of transfer and ending on the date on which the applicable temporary period for such prior issue would end (determined without regard to the discharge of the prior issue) are invested for a temporary period.

(iv) If proceeds of a prior issue are permitted to be invested in materially higher yield acquired obligations beyond any temporary period provided in paragraph (b) of this section because such proceeds were not expended as anticipated (or could be so invested if such prior issue were not discharged), and if prior to the issuance of the refunding issue the issuer demonstrates to the satisfaction of the Commissioner that, on the basis of facts, estimates, and circumstances in existence on the date of issue, a reasonable extension of such investment is necessary for such proceeds, then such proceeds may be invested in materially higher yield acquired obligations when such proceeds become transferred proceeds. In determining whether an extension under this subdivision is necessary and in determining the period of any such extension, the Commissioner shall take into account (A) whether the proceeds can be expended on the project or projects in a reasonable period of time and (B) the effect of applying such proceeds to pay all or any portion of the principal or interest, when due, of the prior issue.

(v) In the case of a refunding issue, the 1-year period described in paragraph (b)(6) shall not apply to investment proceeds to be used to discharge the prior issue. For the purpose of applying the preceding sentence to investments that are not made with transferred proceeds, a reference to paragraph (e)(3)(i) and (ii) of this section shall be substituted for the reference to paragraph (b)(1) of this section appearing in paragraph (b)(6) of this section.

(vi) Where an issue of obligations to which paragraph (c) of this section applies is a refunding issue, transferred proceeds shall be deemed invested for a temporary period if the obligations of the refunding issue (A) will not be outstanding after the period applicable to the prior issue under paragraph (c)(1)(i) of this section (determined, in the case of the 6 months referred to therein, on the basis of the facts, estimates, and circumstances in existence on the date of issue of the refunding issue) and (B) will not be issued in an amount greater than the amount determined under paragraph (c)(1)(ii) of this section.

(vii) Proceeds of a refunding issue are invested for a temporary period if those proceeds—

(A) Are received as accrued interest for a period not to exceed 6 months and will not be used to discharge the prior issue, and

(B) Are invested and will be expended during the 1-year period beginning on the date of issue.

(viii) Proceeds of a refunding issue that will not be used to discharge the prior issue (other than proceeds described in paragraph (e)(3)(vii) of this section) are invested for a temporary period if those proceeds are invested during a 1-year period beginning on the date of issue but only to the extent that those proceeds either are used to pay issuance costs or do not exceed 1 percent of the original proceeds of the refunding issue.

(ix) Proceeds of a refunding issue that will not be used to discharge the prior issue (other than proceeds described in paragraph (e)(3) (vii) and (viii) of this section) are invested for a temporary period to the extent that those proceeds do not exceed the lesser of—

(A) $10,000, or

(B) One percent of the original proceeds of the refunding issue.

(4) *Major portion test.* (i) Proceeds of a refunding issue may be invested in materially higher yield obligations pursuant to § 1.103–13(b)(1)(ii) (relating to major portion test), subject to the following limitations:

(A) Acquired obligations that are invested at a materially higher yield pursuant to § 1.103–13(b)(1)(ii) may be acquired only with transferred proceeds.

(B) Proceeds of the refunding issue may be invested in materially higher yield acquired obligations pursuant to § 1.103–13(b)(1)(ii) only to the extent that they do not exceed the amount provided in § 1.103–13(b)(1)(ii) determined with reference to the prior issue.

(ii) To the extent that proceeds of an issue of governmental obligations are invested at a materially higher yield in a reasonably required reserve or replacement fund, such proceeds are included as proceeds invested in materially higher yield acquired obligations for purposes of the major portion test in § 1.103–13(b)(1)(ii). See the allocation rule in paragraph (e)(1)(ii) (C) and (D) of this section if less than the outstanding principal amount of the prior issue is refunded with the proceeds of a refunding issue.

(5) *Reasonably required reserve or replacement fund.* (i) Proceeds of a refunding issue (including transferred proceeds) may be invested in materially higher yield acquired obligations pursuant to paragraph (d) of this section (relating to a reasonably required reserve or replacement fund), subject to the following limitations:

(A) Acquired obligations that are invested at a materially higher yield pursuant to paragraph (d) of this section may be acquired only with transferred proceeds or proceeds of the refunding issue that are not to be used to discharge the prior issue.

(B) At any time before the adjusted maturity date of the prior issue, proceeds of the refunding issue may not be invested at a materially higher yield pursuant to paragraph (d) of this section.

(C) If a refunding issue is a series B issue (within the meaning of § 1.103–15(c)) and if the requirements in § 1.103–15(c)(2) are satisfied, then the proceeds of the refunding issue may not be invested at a materially higher yield pursuant to paragraph (d) of this section.

(ii) See the allocation rule in paragraph (e)(1)(ii) (C) and (D) of this section if less than the outstanding principal amount of the prior issue is refunded with the proceeds of a refunding issue.

(iii) If an amount in excess of the amount allowed under paragraphs (d)(1) and (e)(5) of this section is invested in a reserve or replacement fund for a refunding issue, such excess may be invested at a yield that is materially higher than the yield on the refunding issue only if—

(A) The issuer applies for a ruling that the specified reserve or replacement fund is necessary, and

(B) A ruling to that effect is subsequently issued to the issuer (before or after the date of issuance of the obligations).

The procedure set forth in the preceding sentence does not preclude an issuer from relying on a published ruling in which the Commissioner specifically designates a category of reserve or replacement funds as reasonably required for refunding issues.

(6) *Adjusted maturity date.* (i) The adjusted maturity date of a prior issue is the earlier of—

(A) The maturity date, or

(B) The expected call date (provided that the expected call date is not unreasonably early).

(ii) If different parts of the prior issue have different adjusted maturity dates, then (solely for purposes of paragraph (e) (4) and (5) of this section) those different parts shall be treated as separate issues and the amount of any proceeds of the prior issue shall be allocated among the different parts in the same proportion as each part bears to the total outstanding principal amount of the prior issue. If parts of a prior issue are treated as separate issues under the preceding sentence, and if the proceeds of the refunding issue are used to refund two or more such parts, then

(solely for purposes of paragraph (e) (4) and (5) of this section) the portion of the proceeds of the refunding issue used to refund each such part of the prior issue shall be treated as a separate refunding issue.

(7) *Exception.* (i) Section 1.103–14(e)(5)(i)(B) does not apply to amounts deposited in a reserve or replacement fund for a refunding issue to the extent that such amounts—

(A) Were held in a reasonably required reserve or replacement fund for the prior issue, or

(B) Would (but for the refunding) have been deposited in a reasonably required reserve or replacement fund for the prior issue.

(ii) The following examples illustrate the application of this subparagraph:

*Example (1).* On July 1, 1987, city A issues $10 million of revenue bonds. No reserve or replacement fund is created for the revenue bonds. On July 1, 1989, city A issues $11 million of refunding bonds to defease the 1987 issue. City A accumulates a reserve fund of $800,000 for the 1989 issue. This reserve fund is pledged as collateral for the 1989 issue, and city A is unable to make withdrawals from the reserve fund at any time during the term of the 1989 issue (except to pay debt service on the 1989 issue). Assume that the entire 1987 issue will be called on July 1, 1997, and no portion of the 1987 issue will be retired before that date. Based on these facts, the proceeds of the 1989 issue replace amounts held in the reserve fund within the meaning of section 103(c)(2)(B). Therefore, these amounts are subject to the same yield restrictions, and generally have the same status, as proceeds of the 1989 issue. As a result, the revenues deposited in the reserve fund are subject to arbitrage yield restrictions until July 1, 1997 (see § 1.103–14(e)(5)(i)(B)) unless city A makes the demonstration required by § 1.103–14(e)(5)(iii). The result is the same whether or not city A reasonably expects to use amounts held in the reserve fund to pay debt service on the 1989 issue.

*Example (2).* On January 1, 1988, city B issues $10 million of revenue bonds. Under the bond indenture, city B is required to deposit revenues of $200,000 a year for 5 years in a reasonably required reserve fund for the 1988 issue (the "1988 reserve"). On January 1, 1990, city B issues $11 million of refunding bonds to defease the 1988 issue. At that time, city B transfers the $400,000 accumulated in the 1988 reserve to a reasonably required reserve fund for the 1990 issue (the "1990 reserve"). In addition, city B deposits revenues of $200,000 a year in the 1990 reserve for the next 3 years. Based on these facts, the amounts held in the 1990 reserve may be invested at an unrestricted yield pursuant to § 1.103–14(d).

**§ 1.103–15 Excess proceeds.**

(a) *General rule.* If the excess proceeds (as defined in paragraph (b) of this section) of a refunding issue exceed 1 percent of the original proceeds, then (except as provided in paragraphs (c), (d), (e), and (f) of this section) the refunding obligations are arbitrage bonds.

(b) *Excess proceeds*—(1) *In general.* For purposes of this section, the "excess proceeds" of a refunding issue are all proceeds (including investment proceeds) other than:

(i) Proceeds that will be used to pay principal, interest, or call premium on the prior issue;

(ii) Proceeds that will be used to pay not more than 6 months' accrued interest on the refunding issue;

(iii) Proceeds that will be used to pay capitalized interest (as defined in subparagraph (2) of this paragraph) on the refunding issue;

(iv) Proceeds that will be used as part of a reasonably required reserve or replacement fund for the refunding issue;

(v) Proceeds that will be used to pay the administrative costs of—

(A) Repaying the prior issue,

(B) Carrying and repaying the refunding issue, or

(C) Purchasing, carrying, and selling or redeeming obligations acquired with the proceeds of the refunding issue;

(vi) Transferred proceeds that will be used for the purpose of the prior issue;

(vii) Investment proceeds derived from the investment of a reasonably required reserve or replacement fund;

(viii) Interest on acquired purpose obligations; and

(ix) Amounts treated as proceeds solely because they are accumulated in a sinking fund for the refunding issue (see § 1.103–13(g)).

(2) *Capitalized interest.* For purposes of subparagraph (1) of this paragraph, "capitalized interest" means interest on a refunding issue that accrues within—

(i) The period of time necessary to complete the construction or acquisition of the project for which the prior issue was issued, plus

(ii)(A) One year, or

(B) A period not longer than 5 years if, prior to the issuance of the refunding issue, the issuer demonstrates to the satisfaction of the Commissioner that, because of inadequate revenues during the commencement of operations of the project, interest which accrues during that period should be treated as capitalized interest.

(c) *First exception: gross refunding*—(1) *In general.* If a refunding issue (hereinafter called the "series B issue") is used together with one or more other refunding issues (hereinafter called the "series A issues") in a gross refunding of a prior issue and if all five of the requirements set out in subparagraph (2) of this paragraph are satisfied, then this section shall not apply to the series B issue or the series A issues.

(2) *Requirements.* The requirements referred to in subparagraph (1) of this paragraph are as follows:

(i) Substantially all of the excess proceeds of the series B issue and substantially all of the excess proceeds of each series A issue will be used to pay principal and interest on the series B issue. (For the meaning of "substantially all", see paragraph (d)(2) of this section.)

(ii) Substantially all of the excess proceeds of the series B issue and substantially all of the excess proceeds of each series A issue will be investment proceeds.

(iii) At least 99 percent of all principal and interest on the series B issue will be paid with proceeds of the series B and series A issues or with the earnings on other amounts put into escrow to discharge the prior issue.

(iv) The series B issue will not be discharged later than the prior issue.

(v) At no time will the proceeds of the series B issue which have been spent exceed the sum of the payments made on or before that time of—

(A) Principal and interest on the series B issue, and

(B) Administrative costs of the series B issue described in paragraph (b)(1)(v) (B) and (C) of this section.

(d) *Second exception: crossover refunding*—(1) *In general.* This section shall not apply to a refunding issue if both of the following requirements are satisfied:

(i) Substantially all of the excess proceeds of the refunding issue will be used to pay interest that accrues on the refunding issue before the prior issue is discharged.

(ii) No proceeds of any refunding issue will be used to pay interest on the prior issue or to replace funds that are used directly or indirectly to pay such interest.

(2) *Substantially all.* For purposes of paragraphs (c)(2) and (d)(1) of this section, "substantially all" of the excess proceeds of a refunding issue means all of the excess proceeds except for an amount not larger than 1 percent of the original proceeds.

(e) *Third exception: prior ruling*—(1) *In general.* This section shall not apply to a refunding issue if, prior to the issuance of the refunding issue, the issuer demonstrates to the satisfaction of the Commissioner that it will not realize any material debt service or other savings directly or indirectly from the receipt of excess proceeds

amounting to more than 1 percent of the original proceeds of the issue.

(2) *Material.* For purposes of this paragraph—

(i) A debt service or other savings is material if it has a present value of more than $100 on the day the refunding issue is sold;

(ii) In determining the present value of any debt service or other savings, the yield on the refunding issue (as determined under § 1.103–13(c)(2)(ii)) shall be used as the discount rate.

(f) *Fourth exception: temporary period.* This section shall not apply to a refunding issue if the prior issue is discharged within 180 days after the refunding bonds are issued.

(g) *Special rule.* If the original proceeds of a refunding issue are less than $500,000, then "$5,000" shall be substituted for "1 percent of the original proceeds" in paragraphs (a) and (d)(2) of this section and for "1 percent of the original proceeds of the issue" in paragraph (e)(1) of this section.

(h) *Meaning of terms.* The terms used in this section have the same meaning as in §§ 1.103–13 and 1.103–14.

(i) *Transferred proceeds.* For purposes of this section, all original proceeds, investment proceeds, and transferred proceeds of the prior issue are treated as transferred proceeds of the refunding issue, except for amounts spent before the refunding bonds are issued.

(j) *Illustrations.* For purposes of this paragraph, it is assumed that city A has outstanding $10 million of noncallable 9-percent revenue bonds (the "prior issue") due on January 1, 1990. Principal and interest on the prior issue are payable solely from revenues of the city A water works. In order to modify restrictions in the bond indenture, city A contemplates refunding the prior issue on January 1, 1983. To that end, city A takes under consideration four different advance refunding programs:

*Example (1).* The first refunding program contemplates a standard defeasance of the prior issue. In this first program, city A would issue $11,500,000 of 7-percent refunding bonds at par on January 1, 1983. The refunding bonds would mature on January 1, 1990 and would be paid solely from revenues of the city A water works. The original proceeds of the refunding bonds would be $11,435,000 (*i.e.*, $11,500,000 less issuing expenses of $65,000) and the investment proceeds (derived from investment in 6.5-percent Treasury obligations) would be $4,916,820. Of the total $16,351,820 of proceeds, $10,000,000 would be used to pay principal on the prior issue, $6,300,000 would be used to pay interest on the prior issue, $35,000 would be used to pay administrative costs of purchasing, carrying, and redeeming acquired obligations, $10,000 would be used to pay administrative costs of carrying and repaying the refunding bonds, and the remaining $6,820 would be used to pay principal on the refunding bonds. Based on these assumptions, the excess proceeds of the refunding issue (*i.e.*, $6,820) would be less than 1 percent of the original proceeds (*i.e.*, .01 × $11,435,000 = $114,350). Therefore, the refunding bonds would not be treated as arbitrage bonds under this section. (See paragraph (a) of this section.)

*Example (2).* The second refunding program contemplates a full cash defeasance of the prior issue. In this second program, city A would issue $11,135,000 of series A revenue bonds and $5,320,000 of series B special obligation bonds at par on January 1, 1983. The series A bonds would bear a 7-percent coupon, would mature on January 1, 1990, and would be paid solely from revenues of the city A water works. The series B bonds would bear a 4-percent coupon, would be paid solely out of earnings on amounts put into escrow to defease the prior issue, and would mature according to the following schedule:

| | |
|---|---|
| July 1, 1983 | $410,000 |
| January 1, 1984 | 430,000 |
| July 1, 1984 | 410,000 |
| January 1, 1985 | 405,000 |
| July 1, 1985 | 395,000 |
| January 1, 1986 | 395,000 |
| July 1, 1986 | 385,000 |
| January 1, 1987 | 375,000 |
| July 1, 1987 | 370,000 |
| January 1, 1988 | 365,000 |
| July 1, 1988 | 355,000 |
| January 1, 1989 | 350,000 |
| July 1, 1989 | 340,000 |
| January 1, 1990 | 335,000 |

The yield on the series B bonds (computed separately) would be approximately 4¼ percent (see § 1.103–13(c)). The proceeds of both the series A and series B issues would be invested in United States Treasury obligations paying 6.5 percent. Even though the combined yield on the series A and series B issues would be somewhat greater than 6.5 percent, the series B bonds would be arbitrage bonds.

*Example (3).* The third refunding program also contemplates a full cash defeasance of the prior issue. In this third refunding program, city A would issue $16,455, 000 of 6⅜–percent refunding bonds at par on January 1, 1983. The 6⅜–percent refunding bonds would be an amalgamation of the series A and B refunding bonds described in example (2) of this paragraph. The 6⅜–percent refunding bonds would be paid partly from revenues of the city A water works and partly from earnings on amounts put into escrow to defease the prior issue. They would mature according to the following schedule:

| | |
|---|---|
| July 1, 1983 | $410,000 |
| January 1, 1984 | 430,000 |
| July 1, 1984 | 410,000 |
| January 1, 1985 | 405,000 |
| July 1, 1985 | 395,000 |
| January 1, 1986 | 395,000 |
| July 1, 1986 | 385,000 |
| January 1, 1987 | 375,000 |
| July 1, 1987 | 370,000 |
| January 1, 1988 | 365,000 |
| July 1, 1988 | 355,000 |
| January 1, 1989 | 350,000 |
| July 1, 1989 | 340,000 |
| January 1, 1990 | 11,470,000 |

The original proceeds of this 6⅜–percent refunding issue would be $16,355,000 (*i.e.*, $16,455,000 less issuing expenses of $100,000) and the investment proceeds (derived from investment in 6.5 percent Treasury obligations) would be $6,085,625. Of the total $22,440,625 of proceeds, $10,000,000 would be used to pay principal on the prior issue, $6,300,000 would be used to pay interest on the prior issue, $50,000 would be used to pay administrative costs of purchasing, carrying, and redeeming acquired obligations, $767,100 would be used to pay interest on the refunding bonds, and the remaining $5,323,525 would be used to pay principal on the refunding bonds. Based on these assumptions, the excess proceeds of the 6⅜–percent refunding issue would be $6,090,625 (*i.e.*, $767,100 + $5,323,525), which is $5,927,075 more than the amount permitted under paragraph (a) of this section (*i.e.*, 1 percent of the original proceeds = .01 × $16,355,000 = $163,550). City A would realize a debt service savings of approximately $115,000 by using the 6⅜–percent refunding bonds to refund the prior issue instead of using the 7–percent refunding bonds described in example (1) of this paragraph. Moreover, at least $101 of the $115,000 savings would result from city A's receipt of $5,927,075 of impermissible excess proceeds. Therefore, the 6⅜–percent refunding bonds would not come within the exception in paragraph (e) of this section. Because the 6⅜–percent refunding bonds would also fail to come within the exceptions in paragraphs (c) and (d) of this section, they would be arbitrage bonds.

*Example (4).* (a) The fourth refunding program also contemplated a full cash defeasance of the prior issue. In this fourth refunding program, city A would issue $11,500,000 of series A revenue bonds and $4,950,000 of series B special obligation bonds at par on January 1, 1983. The series A bonds would bear a 7–percent coupon, would mature on January 1, 1990, and would be paid solely from revenues of the city A water works. The series B bonds would bear a 4–percent coupon, would be paid solely out of earnings on amounts put into escrow to discharge the prior issue, and would mature as shown in column C of Table II (see item (b) of this example).

(b) Table I shows receipts and payments of proceeds of the series A issue. Table II shows receipts and payments of proceeds of the Series B issue. For explanatory notes, see item (c) of this example.

**Table I**

| A Date | B Original proceeds spent | C Investment proceeds spent | D Administrative costs | E Remaining proceeds | F Cash balance |
|---|---|---|---|---|---|
| 1-1-83 | $35,000 | 0 | $35,000 | $11,400,000 | 0 |
| 7-1-83 | 79,500 | $370,500 | 0 | 11,320,500 | 0 |
| 1-1-84 | 83,084 | 367,916 | 1,000 | 11,237,400 | $16 |
| 7-1-84 | 84,785 | 365,215 | 0 | 11,152,600 | 31 |
| 1-1-85 | 88,541 | 362,459 | 1,000 | 11,064,000 | 90 |
| 7-1-85 | 90,420 | 359,580 | 0 | 10,973,600 | 70 |
| 1-1-86 | 94,358 | 356,642 | 1,000 | 10,879,300 | 12 |
| 7-1-86 | 96,423 | 353,577 | 0 | 10,782,800 | 89 |
| 1-1-87 | 100,559 | 350,441 | 1,000 | 10,682,300 | 30 |
| 7-1-87 | 102,825 | 347,175 | 0 | 10,579,500 | 5 |
| 1-1-88 | 107,166 | 343,834 | 1,000 | 10,472,300 | 39 |
| 7-1-88 | 109,650 | 340,350 | 0 | 10,362,600 | 89 |
| 1-1-89 | 114,216 | 336,784 | 1,000 | 10,248,400 | 73 |
| 7-1-89 | 116,927 | 333,073 | 0 | 10,131,500 | 46 |
| 1-1-90 | 10,131,546 | 329,274 | 4,000 | 0 | 0 |

**Table II**

| A Date | B Interest paid on series B issue | C Principal paid on series B issue | D Investment proceeds spent | E Original proceeds spent | F Administrative costs | G Remaining proceeds | H Cash balance | I Outstanding principal amount of series B issue |
|---|---|---|---|---|---|---|---|---|
| 1-1-83 | 0 | 0 | 0 | $15,000 | $15,000 | $4,900,000 | 0 | $4,950,000 |
| 7-1-83 | 99,000 | $375,000 | $103,500 | 370,500 | 0 | 4,529,500 | $2,954 | 4,575,000 |
| 1-1-84 | 91,500 | 375,000 | 100,584 | 366,916 | 1,000 | 4,162,500 | 859 | 4,200,000 |
| 7-1-84 | 84,000 | 370,000 | 88,785 | 365,215 | 0 | 3,797,300 | 2,491 | 3,830,000 |
| 1-1-85 | 76,600 | 365,000 | 81,141 | 361,459 | 1,000 | 3,435,900 | 3,788 | 3,465,000 |
| 7-1-85 | 69,300 | 365,000 | 74,720 | 359,580 | 0 | 3,076,300 | 3,734 | 3,100,000 |
| 1-1-86 | 62,000 | 360,000 | 67,358 | 355,642 | 1,000 | 2,720,600 | 3,268 | 2,740,000 |
| 7-1-86 | 54,800 | 360,000 | 61,223 | 353,577 | 0 | 2,367,100 | 1,074 | 2,380,000 |
| 1-1-87 | 47,600 | 350,000 | 49,159 | 349,441 | 1,000 | 2,017,600 | 3,400 | 2,030,000 |
| 7-1-87 | 40,600 | 350,000 | 43,425 | 347,175 | 0 | 1,670,400 | 3,833 | 1,680,000 |
| 1-1-88 | 33,600 | 345,000 | 36,766 | 342,834 | 1,000 | 1,327,600 | 3,323 | 1,335,000 |
| 7-1-88 | 26,700 | 345,000 | 31,350 | 340,350 | 0 | 987,300 | 766 | 990,000 |
| 1-1-89 | 19,800 | 335,000 | 20,016 | 335,784 | 1,000 | 651,500 | 2,215 | 655,000 |
| 7-1-89 | 13,100 | 335,000 | 15,027 | 333,073 | 0 | 318,400 | 1,369 | 320,000 |
| 1-1-90 | 6,400 | 320,000 | 8,232 | 318,454 | 1,000 | 0 | 0 | 0 |

(c) The following notes explain Tables I and II in item (b) of this example:

(1) Column B of Table I shows when the original proceeds of the series A issue would be spent. The original proceeds would be $11,435,000 (*i.e.*, $11,500,000 less issuing expenses of $65,000). Of these original proceeds, $10,000,000 would be used to pay principal on the prior issue, $1,400,000 would be used to pay interest on the prior issue, and the remaining $35,000 would be used to pay administrative costs of investing the proceeds of the series A issue.

(2) Column C of Table I shows when the investment proceeds of the series A issue would be spent. (All these investment proceeds would be spent at the same time they were received.) Of the $4,916,820 of investment proceeds, $10,000 would be used to pay administrative costs of carrying and repaying the series A issue, $4,900,714 (which would be excess proceeds) would be used to pay principal and interest on the series B issue, and the remaining $6,106 would be used to pay principal on the series A issue. These investment proceeds would be derived from investing the original proceeds of the series A issue in 6½-percent Treasury obligations. (It is assumed that 6½ percent is the highest rate that the Treasury will pay on January 1, 1983.)

(3) Column D of Table I shows administrative costs of carrying the series A issue and of investing the proceeds of the series A issue. These administrative costs would be paid with proceeds of the series A issue.

(4) Column E of Table I shows the amount of original proceeds of the series A issue that would be invested in Treasury obligations as of the end of the corresponding day in column A.

(5) Column F of Table I shows small amounts of original proceeds that would be kept in a checking account. These amounts would be temporary investments (see § 1.103–14(e)(3)(ix)).

(6) Column B of Table II shows the interest that would be paid on the series B issue.

(7) Column C of Table II shows the principal that would be paid on the series B issue.

(8) Column D of Table II shows when the investment proceeds of the series B issue would be spent. (Not all these investment proceeds would be spent at the same time they were received. Some would be put into the checking account described in item (c)(12) of this example.) Of the $781,286 of investment proceeds, $7,000 would be used to pay administrative costs of carrying and repaying the series B issue, and the remaining $774,286 (which would be excess proceeds) would be used to pay principal and interest on the series B issue. These investment proceeds would be derived from investing the original proceeds of the series B issue in 4.345-percent Treasury obligations. (However, the yield on the acquired obligations, taking into account $15,000 of administrative costs paid on January 1, 1983, would be only 4.252 percent. The yield on the series B issue would also be 4.252 percent.)

(9) Column E of Table II shows when the original proceeds of the series B issue would be spent. The original proceeds would be $4,915,000 (*i.e.*, $4,950,000 less issuing expenses of $35,000). All these original proceeds would be used to pay interest on the prior issue except for $15,000 that would be used to pay administrative costs of investing the original proceeds of the series B issue.

(10) Column F of Table II shows administrative costs of carrying and repaying the series B issue and investing the proceeds of the series B issue. These administrative costs would be paid with investment proceeds of the series B issue.

(11) Column G of Table II shows the amount of original proceeds of the series B

issue that would be invested in Treasury obligations as of the end of the corresponding day in column A.

(12) Column H of Table II shows small amounts of original and investment proceeds of the series B issue that would be kept in a checking account. These amounts would be temporary investments (see § 1.103–14(e)(3)(ix)).

(d) Based on items (a), (b), and (c) of this example, the following conclusions may be drawn:

(1) All of the excess proceeds of the series B issue and substantially all (*i.e.*, all but $6,106) of the excess proceeds of the series A issue would be used to pay principal and interest on the series B issue.

(2) All of the excess proceeds of the series B and series A issues would be investment proceeds.

(3) All of the principal and interest on the series B issue would be paid with proceeds of the series B and series A issues.

(4) The series B issue would be discharged on January 1, 1990, the same day as the prior issue.

(5) The proceeds of the series B issue would not be spent faster than principal and interest on the series B issue and administrative costs of the series B issue would be paid. For example, on January 1, 1984, $956,500 of proceeds of the series B would have been spent (*i.e.*, $752,416 of original proceeds plus $204,084 of investment proceeds), which is the same as the $956,500 of principal, interest, and administrative costs of the series B issue that would be paid on or before January 1, 1984 (*i.e.*, $750,000 of principal plus $190,500 of interest plus $16,000 of administrative costs).

(e) Based on the conclusions in item (d) of this example, the series A and series B bonds are not treated as arbitrage bonds under this section (see paragraph (c) of this section).

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

**Jerome Kurtz,**

*Commissioner of Internal Revenue.*

Approved: May 8, 1979.

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

[FR Doc. 79-17314 Filed 5-31-79; 8:45 am]

BILLING CODE 4830-01-M

## RENEGOTIATION BOARD

### 32 CFR Chapter XIV

### Removal of Chapter From CFR

**Editorial Note:** The activities and funding of the Renegotiation Board were terminated effective March 31, 1979, under Title V of Pub. L. 95-431 (92 Stat. 1043). Therefore, Title 32, Chapter XIV is deleted from the *Code of Federal Regulations.*

BILLING CODE 6820-27-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### 32 CFR Part 806a

### Releasing Information From and Providing Access to Military Personnel Records

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

**ACTION:** Final rule.

**SUMMARY:** This rule (32 CFR Part 806a) is deleted because of limited applicability to the general public. Intended effect is to insure that only regulations which substantially affect the public be maintained in the Air Force portion of the Code of Federal Regulations.

**EFFECTIVE DATE:** June 1, 1979.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Carol M. Rose, Air Force Federal Register Liaison Officer, AS/DASJR, Pentagon, Washington, DC 20330. Phone: (202) 697-1861.

**Carol M. Rose,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 79-17647 Filed 6-6-79; 8:45 am]

BILLING CODE 3910-01-M

### 32 CFR Part 807a

### Distribution of Federal Catalog System Data to the Public

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

**ACTION:** Final rule.

**SUMMARY:** This rule (32 CFR 807a) is deleted because of limited applicability to the general public. Intended effect is to insure that only regulations which substantially affect the public be maintained in the Air Force portion of the Code of Federal Regulations.

**EFFECTIVE DATE:** June 1, 1979.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Carol M. Rose, Air Force Federal Register Liaison Officer, AS/DASJR, Pentagon, Washington, DC 20330. Phone: (202) 697-1861.

**Carol M. Rose,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 79-17648 Filed 6-6-79; 8:45 am]

BILLING CODE 3910-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 164

**[CGD 77-168]**

### Navigation Safety Regulations; Electronic Navigation Equipment

**AGENCY:** Coast Guard, DOT.

**ACTION:** Correction.

**SUMMARY:** On May 31, 1979 the Coast Guard published an interim final rule in the **Federal Register** (44 FR 31592) which contained an incorrect effective date. This error is corrected by deleting in the first column, on the second line of the "EFFECTIVE DATE" section of the rule, the words, "July 16, 1979" and substituting a colon.

**FOR FURTHER INFORMATION CONTACT:** Mr. Fred A. Schwer, Project Manager, Office of Marine Environment and Systems (G-WLE-4/73), Room 7315, Department of Transportation, Nassif Bldg, 400 Seventh St., S.W., Washington, D.C. 20950, (202) 426-4958.

(Sec. 2, Pub. L. 95-474 (33 U.S.C. 1221); 49 CFR 1.46(n)(4))

Dated: June 4, 1979.

**F.P. Schubert,**

*Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.*

[FR Doc. 79-17777 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-14-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[FRL 1236-1]**

### Air Programs; Approval and Promulgation of Implementation Plans Tennessee: Adoption of Plan Revisions

**AGENCY:** U.S. Environmental Protection Agency, Region IV.

**ACTION:** Final rule.

**SUMMARY:** The Tennessee Air Pollution Control Board adopted, after public notice and public hearing, revisions in their rules and regulations, to become effective April 12, June 16, 1978. The revisions involve changes in the diffusion equation limiting particulate emissions, continous monitoring requirements, vinyl chloride regulations, procedures for review of new sources in non-attainment areas, emission limits for wood-fired fuel burning equipment and other miscellaneous changes. These

provisions were described in a notice of proposed rulemaking in the **Federal Register** of February 23, 1979 (44 FR 10781). No comments were received on the proposal. The changes are today approved as proposed.

**DATES:** These changes are effective June 7, 1979.

**ADDRESSES:** Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, EPA (PM-213), 401 M. Street, S.W., Washington, D.C. 20460.
EPA Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308.
Tennessee Air Pollution Control Division, 256 Capitol Hill Building, Nashville, Tennessee 37219.

**FOR FURTHER INFORMATION CONTACT:** Mr. Archie Lee, Air Programs Branch, EPA Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308, 404/881-2864.

**SUPPLEMENTARY INFORMATION:** Proposed changes in the Tennessee Air Pollution Control Regulations were adopted by the Tennessee Air Pollution Control Board and submitted to EPA as a revision to the State Implementation Plan. The major revisions are discussed below.

The previous regulation allowing dispersion enhancement techniques was corrected, and sources are prevented from returning to the diffusion equation after being regulated by the process weight table. Another revision fulfills, EPA's requirements for continuous monitoring and requires written reports on emissions. In addition, Tennessee now has emission standards for vinyl chloride that are equivalent to federal standards.

Wood-fired boilers were exempt under the Tennessee Air Quality Act until recently when the State Legislature removed their exemption. Regulations for control of wood-fired boilers were adopted in the original SIP but these requirements were based on the example region concept. Now that the Board has had time to reconsider the implications of the example region concept, they have adjusted the emission limits to conform more closely to those required to achieve the air quality standards, without placing any unneccessary control burdens on the sources involved.

Chapter 9, Construction and Operating Permits, has been revised to include provisions of the December 21, 1976, Interpretative Ruling in issuing permits to sources in or impacting non-attainment areas. Other miscellaneous changes were adopted regarding conflict of interest and other housecleaning matters.

The Administrator's review of these materials indicates that implementation of the present revisions will have no adverse impact on the attainment and maintenance of the National Ambient Air Quality Standards. Accordingly, these revisions are approved, effective June, 7, 1979.

(Section 110(a) of the Clean Air Act (42 U.S.C. 7410(a))).

Dated: May 24, 1979.

**Douglas M. Costle,**

*Administrator.*

**Note.**—Incorporation by reference provisions approved by the Director of the **Federal Register** May 18, 1972. A copy of the incorporated material is on file in the office of the Federal Register library.

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

### Subpart RR—Tennessee

In § 52.2220, paragraph (c) is amended by adding subparagraph (29) as follows:

**§ 52.2220 Identification of plan.**

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(29) Regulations providing for continous monitoring of existing sources, control of vinyl chloride emissions, review of new sources in nonattainment areas, control of emissions from wood-fired boilers, change in diffusion equation limiting particulate emissions, conflict of interest rules and miscellaneous other changes, submitted on May 3 and June 22, 1978, by the Tennessee Department of Public Health, Division of Air Pollution Control.

[FR Doc. 79-17604 Filed 6-6-79; 8:45 am]
BILLING CODE 6560-01-M

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### 40 CFR Part 65

**[FRL 1236-7]**

## Approval of Delayed Compliance Order Issued by State of Utah; Through the Air Conservation Committee to Spanish Fork Foundry, Spanish Fork, Utah

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Administrator of EPA hereby approves a Delayed Compliance Order issued by the State of Utah through the Air Conservation Committee to the Spanish Fork Foundry. The Order requires the Foundry to complete construction and installation of new buildings and electric furnaces, discontinue use of existing furnaces and achieve compliance with certain regulations contained in the federally-approved Utah State Implementation Plan (SIP). Because of the Administrator's approval, Spanish Fork Foundry's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulations covered by the Order during the period the Order is in effect.

**DATE:** This rule takes effect on June 7, 1979.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine Phillips, Chief, General Enforcement Section, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295, telephone 303-837-2361.

**ADDRESSES:** A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying during normal business hours at: Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295

**SUPPLEMENTARY INFORMATION:** On March 21, 1979 the Regional Administrator of EPA's Region VIII Office published in the **Federal Register**, 44 FR 18530, a notice proposing approval of a delayed compliance order issued by the State of Utah, through the Air Conservation Committee to the Spanish Fork Foundry. The notice asked for public comments by April 27, 1979, on EPA's proposed approval of the Order. No comments were received during this period.

Therefore, the delayed compliance order issued to Spanish Fork Foundry is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Spanish Fork Foundry on a schedule to complete construction and installation of new buildings and electric furnaces, discontinue use of existing furnaces and achieve compliance as expeditiously as practicable with Section 2.2.1 of the Air Conservation Regulations, a part of the federally approved Utah State

Implementation Plan. The Order also imposes the Foundry submit reports to the Committee within five days of completion of construction and installation of new buildings and furnaces certifying compliance with the outlined schedule. If the conditions of the Order are met, it will permit Spanish Fork Foundry to delay compliance with the SIP regulations covered by the Order until July 1, 1979. The Foundry is unable to immediately comply with these regulations.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

## PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.491 to read as follows:

**§ 65.491 EPA Approval of State delayed compliance orders issued to major stationary sources.**

* * * * *

| Source | Location | Order No. | SIP regulation involved | Date of FR proposal | Final compliance date |
|---|---|---|---|---|---|
| * | * | * | * | * | * |
| Spanish Fork Foundry | Spanish Fork, Utah | A-79-4 | Section 2.2.1 | 3-21-79 | 7-1-79 |

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place Spanish Fork Foundry on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Utah State Implementation Plan.

**Authority:** 42 U.S.C. 7413 U.S.C. 7413(d), 7601.

Dated: May 29, 1979.

**Douglas M. Costle,**

*Administrator.*

[FR Doc. 79-17606 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

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**40 CFR Part 65**

**[FRL 1236-8]**

## Approval of Delayed Compliance Order Issued by State of Washington Department of Ecology to the Louisiana Pacific Corp.

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Administrator of EPA hereby approves a Delayed Compliance Order issued by the State of Washington Department of Ecology to the Louisiana Pacific Corporation. The Order requires the company to bring air emissions from its sawmill at Ione, Washington into compliance with certain regulations contained in the federally approved Washington State Implementation Plan (SIP). Because of the Administrator's approval, Louisiana Pacific's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

**DATES:** This rule takes effect on June 7, 1979.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth D. Brooks, EPA, Washington Air Coordinator, 13400 Northrup Way, Suite 3, Bellevue, Washington 98004, telephone (206) 455-7218.

**ADDRESSES:** A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copy (for appropriate charges) during normal business hours at the Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, 11th Floor (11B).

**SUPPLEMENTARY INFORMATION:** On March 28, 1979, the Regional Administrator of EPA's Region 10 Office published in the **Federal Register**, 44 FR 18534, a notice proposing approval of a delayed compliance order issued by the State of Washington Department of Ecology to the Louisiana Pacific Corporation. The notice asked for public comments by April 27, 1979 on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to Louisiana Pacific Corporation is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Louisiana Pacific Corporation on a schedule to bring its wigwam burner at Ione, Washington into compliance as expeditiously as practicable with the Washington Administrative Code (WAC) 18-04-040, a part of the federally approved Washington State Implementation Plan. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and reporting requirements. Inclusion of interim monitoring requirements in the Order would be unreasonable. If the conditions of the Order are met, it will permit Louisiana Pacific to delay compliance with the SIP regulations covered by the Order until July 1, 1979. The company is unable to immediately comply with these regulations.

If the Administrator determines that Louisiana Pacific Corporation is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Action will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place Louisiana Pacific Corporation on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Washington State Implementation Plan.

**Authority:** 42 U.S.C. 7413(d), 7601.

Dated: May 29, 1979.

**Douglas M. Costle,**

*Administrator.*

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

## PART 65—DELAYED COMPLIANCE ORDERS

By adding the following entry to the table in § 65.521:

**§ 65.521 EPA approval of State delayed compliance orders issued to major stationary sources**

The State orders identified below have been approved by the Administrator in accordance with

section 113(d)(2) of the Act and with this part. With regard to each order, the Administrator has made all the determinations and findings which are necessary for approval of the order under section 113(d) of the Act.

| Source | Location | Order No. | SIP regulation(s) involved | Date of FR proposal | Final compliance date |
|---|---|---|---|---|---|
| * * | * | * | * | * | * |
| Louisiana Pacific Corp. | Ione, Wash. | W12 | WAC 18-04-040. | 3/28/79 | 7/1/79 |
| * * | * | * | * | * | * |

[FR Doc. 79-17603 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

## 40 CFR Part 162

**[FRL 1242-3; OPP—250013]**

## Regulations for the Enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act; Registration, Reregistration and Classification Procedures

**AGENCY:** Environmental Protection Agency (EPA), Office of Pesticide Programs.

**ACTION:** Notification to Secretary of Agriculture of Final Regulation.

**SUMMARY:** Notice is given as required by Section 25(a)(2)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, that the Administrator, EPA, has forwarded to the Secretary of the U.S. Department of Agriculture a copy of EPA's final regulation designed to exempt those pesticides offered solely for use on humans that are also new drugs from the provisions of the FIFRA. It also clarifies the EPA policy relative to the registration of pesticide products that are not new drugs or new animal drugs.

**FOR FURTHER INFORMATION CONTACT:** Jay Ellenberger, Registration Division (TS-767), office of Pesticide Programs, EPA, Room E-329, 401 M Street, S.W., Washington, D.C. 20460, telephone 202/426-9490.

**SUPPLEMENTARY INFORMATION:** Section 25(a)(2)(B) of FIFRA states that the Administrator shall provide the Secretary of Agriculture a copy of any final regulation at least 30 days prior to signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the final regulation within 15 days after receiving it, the Administrator shall publish in the **Federal Register** (with the final regulation) the comments of the Secretary, if requested, and the response of the Administrator. If the Secretary does not comment in writing within 15 days after receiving the final regulations, the Administrator may sign such regulation for publication in the **Federal Register** any time after the 15-day period.

Pursuant to FIFRA Section 25(a)(3), a copy of this final regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. The final regulation has also been submitted to the FIFRA Scientific Advisory Panel, as required by Section 25(d).

(Section 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136))

Dated: June 1, 1979.

**Edwin L. Johnson,**

*Deputy Assistant Administrator for Pesticide Programs.*

[FR Doc. 79-17738 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 41 CFR Part 3

**[Procurement Regulation Directive 78-11]**

## NASA Procurement Regulation (NPR)

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** The Cost Accounting Standards (CAS) Board has amended its regulations, effective August 1, 1978 (43 FR 24819, June 8, 1978) to exempt contracts awarded to educational institutions, except for contracts to be performed be a Federally Funded Research and Development Center (FFRDC) operated by such an institution. This Procurement Regulation Directive includes implementing changes to NASA Procurement Regulations 3.1203(a) and 3.1204-1(a).

**EFFECTIVE DATE:** June, 7, 1979.

**FOR FURTHER INFORMATION CONTACT:** James H. Wilson, Policy Division (Code HP-1), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 755-2237.

**SUPPLEMENTARY INFORMATION:** This Procurement Regulation Directive also provides other recent revisions in CAS Board regulations and standards, including the promulgation of CAS 415 (4 CFR 415), "Accounting for the Cost of Deferred Compensation." It also reflects that other CAS have been changed in Appendix "O" which references Cost Accounting Standards.

**Authority:** The provisions of this document are issued under 42 U.S.C. 2473(b)(1).

**Stuart J. Evans,**

*Director of Procurement.*

1. In Part 3, 3.1203(a) is revised to read as follows:

**3.1203 Prime Contractor disclosure Statement(s).**

(a) *Solicitation Notice.* The notice entitled Disclosure Statement-Cost Accounting Practices and Certification in 3.501(b)(1)(A), shall be inserted in all solicitations which are likely to result in a negotiated contract exceeding $100,000, except when the price is (i) based on established catalog or market prices of commercial items sold in substantial quantities to the general public or (ii) set by law or regulation. The notice shall not be inserted if the solicitation is limited to small business concerns or to educational institutions subject to the cost principles in Part 15, subpart 3 (except that the notice shall be inserted in solicitations sent to Federally Funded Research and Development Centers operated by an educational institution). The notice should also be excluded from solicitations sent to the Canadian Commercial Corporation or solicitations which will result in contracts executed and performed in their entirety outside the United States, its territories and possessions.

* * * * *

2. As set forth below, in 3.1204-1, paragraph (a)(iii) is revised; in paragraph (a)(iv) the word "or" is deleted and added at the end of paragraph (a)(v); paragraph (a)(vi) is added; and paragraph (c) is revised:

**3.1204-1 Prime Contracts and Solicitations.**

* * * * *

(a) * * *

(iii) contracts awarded to an educational institution subject to the cost principles in Part 15, Subpart 3 except for contracts to be performed by a Federally Funded Research and Development Center (FFRDC) operated by such an institution;

(iv) contracts with contractors who are eligible for and have elected to use modified contract coverage under Part 332 of Appendix O (see (c) below);

(v) contracts which are executed and performed in their entirety outside the United States, its territories and possessions; or

(vi) contracts for which the Cost Accounting Standards Board has approved other waivers or exemptions pursuant to Paragraph 331.30 of Appendix O.

* * * * *

(c) The clauses in 7.104–55(a)(2) and (b) shall be inserted in all solicitations likely to result in a negotiated contract exceeding $100,000, and in all such contracts exceeding $100,000, but under $10,000,000, unless exempt in accordance with (a)(i) through (iii) or (v) and (vi) above, when the offeror certifies he is eligible for and elects to use modified contract coverage under provisions of Part 332 of Appendix O (see (a)(iv) above). In order to administer this exemption effectively, the solicitation notice in 3.501(b)(1)(C) shall be inserted in all solicitations requiring the inclusion of the solicitation notices in 3.501(b)(1)(A).

[FR Doc. 79–17864 Filed 6–6–79; 8:45 am]
BILLING CODE 7510–01–M

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**41 CFR Parts 2, 3, 7, 16, 20, 25**

**[Procurement Regulation Directive 78–12]**

## NASA Procurement Regulation (NPR)

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** The changes in this document are made to further align the NASA Procurement Regulation with the Armed Services Procurement Regulation in areas as follows:

1. Solicitation of Bids
2. Late Bids, Modification of Bids or Withdrawal of Bids Clause
3. Solicitation of Proposals
4. Engineering Change Proposals and Change Order Accounting
5. Miscellaneous Forms
6. Contracts and Agreements Totally Funded by DOE
7. Distribution of Contractual Documents
8. Production Reporting

**EFFECTIVE DATE:** June 7, 1979.

**FOR FURTHER INFORMATION CONTACT:** James H. Wilson, Policy Division (Code HP–1), NASA Headquarters, Washington, D.C. 20546, telephone: 755–2237.

**SUPPLEMENTARY INFORMATION:** (1) In 2.201–1 paragraph (61) pertaining to exchange and/or sale of property and paragraph (62) pertaining to energy conservation are added as additional items to be considered during preparation of invitations for bids.

(2) The "Late Bid" clause in 2.303–2 is revised to permit consideration of late bids bearing a Canadian Postal Service postmark and sent by either registered or certified mail.

(3) In 3.501, paragraph (b) is revised to modify the language to be inserted in solicitations pertaining to late proposals, modification of proposals, withdrawal of proposals, exchange and/or sale of property, and energy conservation.

(4) In Part 7, 7.204–89, 7.204–90, 7.303–89, 7.303–90, 7.403–89, 7.403–90, 7.452–89 and 7.452–90 are added to require the use of the "Engineering Change Proposals" clause and "Change Order Accounting" clause, when applicable.

(5) Editorial changes are made in 16.800 and 16.816.

(6) In Part 20, 20.203–4 is revised to insert the contract number prefix to be used on contracts and agreements that are totally funded by DOE. Such prefix will be used by all NASA installations.

(7) Revisions are made in 20.401 to:

(a) Eliminate the need to furnish information copies of contracts and modifications to contracts that require approval of the Director of Procurement;

(b) Eliminate the requirement to distribute copies of approval letters to the Program Office; and

(c) Authorize NASA Headquarters to forward approved (or disapproved) contracts or supplemental agreements to the official deemed appropriate.

(8) In Part 25, 25.2 is revised to provide that when production progress reporting is to be required, the contractor may be required to prepare and submit such reports.

**Authority:** The provisions of this document are issued under 42 U.S.C. 2473(b)(1).

**Stuart J. Evans,**
*Director of Procurement.*

## PART 2—PROCUREMENT BY FORMAL ADVERTISING

1. In 2.201–1, paragraphs (a)(61) and (a)(62) are added as follows:

**S2.201–1 Supply and Service Contracts.**

(61) If the solicitation offers property for exchange/sale or both, see Part 4, Subpart 1.

(62) See 1.339 "Energy Conservation."

2. The clause in 2.303–2 is revised to read as follows:

**S2.303–2 Late Bids, Modifications of Bids or Withdrawal of Bids.**

* * * * *

**Late Bids, Modifications of Bids or Withdrawal of Bids (September 1978)**

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

(i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or

(ii) it was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

(b) Any modification or withdrawal of bid is subject to the same conditions as in (a) above except that withdrawal of bids by telegram is authorized. A bid may also be withdrawn in person by a bidder or his authorized representative, provided his idenity is made known and he signs a receipt for the bid, but only if the withdrawal is made prior to the exact time set for receipt of bids.

(c) The only acceptable evidence is to establish:

(i) the date of mailing of a late bid, modification or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the bid, modification or withdrawal shall be deemed to have been mailed late. (The term "postmark" means a printed, stamped or otherwise placed impression that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. or Canadian Postal Service).

(ii) the time receipt at the Government installation is the time/date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(d) Notwithstanding the above, a late modification of an otherwise successful bid which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

**Note.**—The term "telegram" includes mailgrams.

## PART 3—PROCUREMENT BY NEGOTIATION

3. In 3.501, paragraph (b)(v) is revised as set forth below. Paragraphs (b)(lxxxvi) and (b)(lxxxvii) are added.

**S3.501 Preparation of Request for Proposals or Request for Quotations.**

* * * * *

(b) ***

(v) with respect to late proposals, modifications of proposals, and withdrawal of proposals, include the provision set forth in 3.802–4(c) (this provision will be appropriately modified in the case of request for quotations); where Standard Form 33 (Solicitation, Offer, and Award) is used, the following notice shall be prominently set forth in the request for proposals:

**Notice to Offerors—Late Proposals, Modifications of Proposals, and Withdrawal of Proposals (September 1978)**

Paragraph 8, "Late Proposals, Modification of Proposals, and Withdrawal of Proposals," of Standard Form 33A does not apply to this solicitation. See the special provision in this solicitation entitled, "Late Proposals."

* * * * *

(lxxxvi) If the solicitation offers property for exchange/sale or both, see Part 4, Subpart 1.

(lxxxvii) See 1.339 "Energy Conservation."

* * * * *

4. As set forth below, in 3.802–4(c) the title is revised; in 3.802–4(c)(1) the provision is revised; paragraph 3.802–4(c)(5) is renumbered to read 3.802–4(c)(6) and is revised, and a new 3.802–4(c)(5) is added.

**S3.802–4 Request for Proposals.**

* * * * *

(c) *Late Proposals, Late Unsolicited Revisions to Proposals and Withdrawal of Proposals.*

(1) Except with respect to procurements estimated not to exceed $10,000, written requests for proposals shall contain the following provision:

**Late Proposals and Withdrawal of Proposals (September 1978)**

The Government reserves the right to consider proposals or modifications thereof received after the date indicated for such purpose, but before award is made, should such action be in the interest of the Government. Proposals may be withdrawn by written or telegraphic notice received at any time prior to award. Proposals may be withdrawn in person by an offeror or his authorized representative, provided such individual furnishes proper identification and signs a receipt for the proposal prior to award.

* * * * *

(5) Offerors may withdraw their proposal any time prior to award, provided that the conditions set forth in the provision entitled "Late Proposals and Withdrawal of Proposals" in (1) above are satisfied.

(6) The provisions of (1) through (5) above are also applicable to late quotations. In the case of a request for quotations, the provisions set forth in (1) above will be appropriately modified.

* * * * *

## PART 7—CONTRACT CLAUSES

(5) In Part 7, as set forth below, 7.204–87 and 7.204–88 are added and marked reserved; 7.204–89 and 7.204–90 are added.

**7.204–87 and 7.204–88 [Reserved]**

**7.204–89 Engineering Change Proposals (ECP's).** In accordance with 26.205, the clause under 7.104–89 is a sample clause.

**7.204–90 Change Order Accounting.** In accordance with 26–205, the clause under 7.104–90 is a sample clause.

6. In Part 7, as set forth below, 7.303–87 through 7.303–88 are added and marked reserved; 7.303–89 and 7.303–90 are added.

**7.303–87 and 7.303–88 [Reserved]**

**7.303–89 Engineering Change Proposals (ECP's).** In accordance with 26.205, the clause under 7.104–89 is a sample clause.

**7.303–90 Change Order Accounting.** In accordance with 26.205, the clause under 7.104–90 is a sample clause.

**7.402–8 [Amended]**

7. The date of the clause "Subcontract" in paragraph 7.402–8(a) is changed to read (September 1977).

8. In Part 7, as set forth below, 7.403–87 and 7.403–88 are added and marked reserved; 7.403–89 and 7.403–90 are added.

**7.403–87 and 7.403–88 [Reserved]**

**7.403–89 Engineering Change Proposals (ECP's).** In accordance with 26.205, the clause under 7.104–89 is a sample clause.

**7.403–90 Change Order Accounting.** In accordance with 26.205, the clause under 7.104–90 is a sample clause.

9. In Part 7, as set forth below, 7.452–87 and 7.452–88 are added and marked reserved; and 7.452–89 and 7.452–90 are added.

**7.452–87 and 7.452–88 [Reserved]**

**7.452–89 Engineering Change Proposals (ECP's).** In accordance with 26.205, the clause under 7.104–89 is a sample clause.

**7.452–90 Change Order Accounting.** In accordance with 26.205, the clause under 7.104–90 is a sample clause.

**7.702–12 [Amended]**

10. The date of the clause in 7.702–12 entitled "Use and Charges" is changed to read "September 1978" instead of "April 1977". Under "Rental Rates" of the clause in paragraph (ii) change "Over 10 years . . . 75%" to read "Over 10 years . . . . 0.75%."

## PART 16—PROCUREMENT FORMS

**16.001 [Amended]**

11. In 16.001(b) change the date of Standard Form 33–A to read "(7–77)" in place of "(3–69)."

12. In Part 16, 16.800 and 16.816 are revised as follows:

**16.800 Scope of Subpart.**

This Subpart prescribes miscellaneous forms, other than contract forms, for use in connection with the procurement of supplies and services.

**16.816 Identical Bid Report for Procurement (DJ 1500).**

This form shall be used in reporting identical bids, pursuant to 1.114.

## PART 20—ADMINISTRATIVE MATTERS

13. In part 20, 20.203–4 is revised as follows:

*20.203–4 Assigned Contract or Agreement Prefixes.*

Approved prefixes for NASA contract or agreement numbers are as follows:

**Headquarters and prefix**

Headquarters Administration Office, NASW.
Procurement Office (Basic Agreements and Institutional Cost Sharing Agreements), NAS 11.

**Field Installations, Offices, and Prefix.**

Langley Research Center, NAS 1.
Ames Research Center, NAS 2.
Lewis Research Center, NAS 3.
Dryden Flight Research Center, NAS 4.
Goddard Space Flight Center, NAS 5.
Wallops Flight Center, NAS 6.
NASA Resident Procurement Office—JPL, NAS 7.
George C. Marshall Space Flight Center, NAS 8.
Lyndon B. Johnson Space Center, NAS 9.
John F. Kennedy Space Center, NAS 10.
National Space Technology Laboratories, NAS 13.

All contracts that are totally funded by the Department of Energy (DOE) shall be assigned the following prefix:

Den———
No.——

This contract prefix designation represents Department of Energy (DE), and NASA (N), and the Center identification number (No.); e.g. DEN 8

would be the MSFC prefix designation. The DEN——— 8 prefix would be followed by five blank spaces and the numeral one, i.e. Den———8———1. Contracts will be sequentially numbered beginning with "1." No contract number shall exceed eleven (11) total digits.

14. In Part 20, 20.401–2 and 20.401–3 are revised as follows:

**S20.401–2 Contracts Requiring Headquarters Approval.** On all contracts and all supplemental agreements issued thereto, requiring approval of the Director of Procurement, one executed copy will be retained by the Office of Procurement, NASA Headquarters (see 20.401–3).

**S20.401–3 Distribution of Contract Documents by Headquarters.** Upon approval (or disapproval) of the proposed contract or supplemental agreement, the Director of Procurement will forward the original and two executed copies of the contract or supplemental agreement together with the contract file to the Procurement Officer or other official as deemed appropriate.

## PART 25—PRODUCTION SURVEILLANCE AND REPORTING

15. In Part 25, 25.202 and 25.203 are revised as follows:

**S25.202 Production Progress Reporting by Contractors.**

(a) When production progress reports are required from the contractor, the clause set forth in ASPR 7–104.51 shall be included in the contract.

(b) Reports shall be made on DD Form 375, Production Progress Reports, or any other form approved by the Office of Management and Budget under the Federal Reports Act of 1942 (P.L. 77–831). Automatic data processing equipment printouts may be substituted for the DD Form 375 provided they contain identical data. Automatic data processing cards or tape or electrical transmissions which contain the data normally contained in these reports may be authorized in lieu of the printed form. Contract schedule provisions supporting the clause referenced in (a) above shall contain but not be limited to instructions relative to (i) the frequency and timing (normally five workdays after each reporting period) of reporting; (ii) the contract line items, exhibits, or exhibit line items for which reporting is required; (iii) offices and mailing addresses to which reports shall be sent, including the purchasing office, the contract administration office (three copies), status control activities and inventory managers, if appropriate; and (iv) special requirements as to codes and formats. When reporting an actual or potential delinquency, the contractor prepared DD Form 375c shall, as a minimum, contain the following data:

(i) Problem—a statement of the difficulty, the reasons therefor and whether caused by the Government or the contractor;

(ii) items and quantities affected;

(iii) date of commencement of the anticipated or actual delinquency;

(iv) action taken by the contractor to overcome the anticipated or actual delinquency;

(v) estimated recovery date based upon evaluation of the factors contributing to the delinquency; and

(vi) a realistic schedule revision which can be met by the contractor.

In the absence of an actual or potential delinquency, the DD Form 375c may be used to provide any information which the contractor deems appropriate.

(c) If the contract is assigned or delegated for contract administration, the contract administration office shall take appropriate action to enforce contract production reporting requirements. The accuracy of contractor-prepared reports shall be verified by either (i) a program of continuous surveillance over the contractor's system for preparation of the reports, or (ii) by individual review of each report.

(d) If the contractor's report indicates that the contract schedule will be met and the contract administration office concurs, no further report by the contract administration office is required. If, on the other hand, either (i) the contractor forecasts a delivery or performance failure, or (ii) the contract administration office does not concur in the contractor's no-failure report, and in either case (A) the delay is expected to be for more than 30 days, or (B) purchasing office action, in any case, is deemed necessary, the contract administration office shall add an endorsement and forward a copy to the purchasing office and to the inventory control manager unless otherwise specified in the contract, within four working days after receipt of the contractor's report. The endorsement shall include:

(i) comments as to nonconcurrence, if applicable;

(ii) Action Taken—by the contractor and by the Government to overcome the anticipated or actual delinquency;

(iii) Action Required—a positive recommendation to the purchasing office of the action necessary to correct the delinquency, including any realistic schedule revision which can be met by the contractor and the extent to which the contractor may have excusable cause of delay. When other actions are indicated, such as those leading to default termination, the contract administration office shall indicate specific dates by which Government action should be taken to preserve the Government's rights.

**S25.203 Delinquency Reports Initiated by Contract Administration Offices.**

The contract administration office may, at any time, and, at its option, advise the purchasing office or, if so identified in the contract, the inventory manager, of any potential or actual delay in performance or delivery. Advice may be furnished by use of:

(i) DD Form 375–2, Delay in Delivery (Flash Notice), in accordance with (b);

(ii) DD Form 375, Production Progress Report, plus DD Form 375c (continuation); or

(iii) message; or

(iv) letter.

[FR Doc. 79–17665 Filed 6–6–79; 8:45 am]

BILLING CODE 7510–01–M

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**41 CFR Parts 1, 7**

**[Procurement Regulation Directive 78–13]**

## NASA Procurement Regulation (NPR)

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** The changes in this document are made to further align the NASA Procurement Regulation with the Armed Services Procurement Regulation in the areas of advance payment of contract financing and property administration.

**EFFECTIVE DATE:** June 7, 1979.

**FOR FURTHER INFORMATION CONTACT:** James H. Wilson, Policy Division (Code HP–1), NASA Headquarters, Washington, D.C. 20546, Telephone: 755–2237.

**SUPPLEMENTARY INFORMATION:** 1. In Part 1, 1.358 is revised; in Part 7, 7.452–4 is revised; and Appendix J. 5001 is revised. These revisions are to update NASA Procurement Regulation coverage on advance payments authorization for primary recipient nonprofit organizations and educational institutions.

2. Supplement 3 to the NASA Procurement Regulation is revised to:

(a) clarify the reporting requirements associated with NASA Form 1018; and

(b) redefine the property administrator's duties and responsibilities.

Authority: The provisions of this document are issued under 42 U.S.C. 2473(b)(1).

**Stuart J. Evans,**

*Director of Procurement.*

## PART 1—GENERAL PROVISIONS

1. In Part 1, 1.358 is revised as follows:

### 1.358 Advance Payment Method of Contract Financing.

Advance payments without interest are authorized for contracts with primary recipient nonprofit organizations and educational institutions. Primary recipient means a recipient organization receiving cash advances directly from the Federal Government. The statutory authorities for advance payments are 10 U.S.C. 2307, 42 U.S.C. 2473(c)(5), and Public Law 85–804 as implemented by Executive Order 10789. (See 3.303(a)(ii), *Determinations and Findings Below the Administrator Level*, 7.452–4, *Advance Payments*, and Appendix J, Subpart 50, *Advance Payments*.)

## PART 7—CONTRACT CLAUSES

2. In Part 7, 7.452–4 through 7.452–6 [Reserved] is revised to read 7.452–5 and 7.452–6 [Reserved]; in Part 7, 7.452–4 is added as follows:

### 7.452–4 Advance Payments.

(a) When advance payments are to be made (see 1.358), insert the following clause:

**Advance Payment (October 1978)**

(a) *Payment Method.* Advance payments by the *(insert "Letter of Credit" or "Direct Treasury Check")* method will be made in accordance with procedures provided in writing to the Contractor by the Contracting Officer. The Contracting Officer reserves the right to redetermine the payment method to be used. Upon such redetermination the Contracting Officer shall unilaterally amend this contract and notify the Contractor in writing 45 days prior to the effective date of the change in method of payment.

(b) *Amount of Advance and Other Payments.* In no instance will the total payments provided under the contract exceed the amount of the contract, as amended, less the amount of withholding provided therein.

(c) *Use of Funds.* The advance payments provided shall be used by the Contractor solely for the purposes of making payments for items of allowable costs allocable to this contract, pursuant to NASA Procurement Regulation, Part 15, or to reimburse the Contractor for such items of cost, and for such other purposes as the Contracting Officer may approve in writing. The Contractor shall not make advance payments to his contractors or subcontractors with advance payments received from the Government under this contract. Any interpretation required as to the proper use of funds shall be made in writing by the Contracting Officer.

(d) *Return of Funds.* The Contractor may at any time repay all or any part of funds obtained by advance payments. When requested in writing by the Contracting Officer, the Contractor shall repay to the Government such amount of the unobligated balance of advance payments as the Contracting Officer deems to be in excess of the Contractor's current needs or the unpaid contract price.

(e) *Termination of Advance Payments.* If the Contractor demonstrates an unwillingness or inability to establish procedures or follow the written procedures provided by the Contracting Officer to minimize the elapsed time between advance payments and the related disbursements, the Contracting Officer may terminate the advance payments by providing written notification of such termination to the Contractor. In that event the Contracting Officer may require immediate repayment to the Government of the unobligated balance of advance payments and unilaterally amend this contract to prescribe an appropriate payment clause that will be applicable thereafter.

(f) *Liquidation.* If, upon completion or termination of this contract, all advance payments obtained by the Contractor have not been fully liquidated by authorized charges under the contract, the unliquidated balance shall be deducted from any sums due the Contractor from the Government, and any excess funds shall be repaid by the Contractor to the Government upon demand.

(g) *Lien on Property Under Contract.* Any and all advance payments made under this contract shall be secured by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify by marking or segregating all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are comingled. The Contractor shall maintain adequate accounting control over such property on his books and records.

If, at any time during the progress of the work on the contract, it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt in duplicate, acknowledging the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(h) *Default Provisions.* Upon the occurrence of any of the following events of default,

(i) termination of this contract by reason of fault of the Contractor;

(ii) a finding by the Contracting Officer that the Contractor

(A) has failed to observe any of the convenants, conditions or warranties of these provisions or has failed to comply with any material provision of this contract, or

(B) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or

(C) has allocated inventory to this contract substantially exceeding reasonable requirements, or

(D) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business;

(iii) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Contractor; or

(iv) the commission of an act of bankruptcy; the Government, without limiting any rights which it may otherwise have, may, in its discretion and upon written notice to the Contractor, without further withdrawals and payments on this contract.

Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances;

(A) charge interest on advance payments outstanding during the period of any such default at the rate established by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97 for the Renegotiation Board;

(B) demand immediate repayment of the unliquidated balance of advance payments hereunder; or

(C) take possession of and, with or without advertisement, sell at public sale at which the Government may be the purchaser, or at private sale, all or any part of the property on

which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the Contractor.

(i) *Prohibition Against Assignment.* Notwithstanding any other provisions of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(j) *Information-Access to Records.* The Contractor shall furnish to the cognizant NASA installation Financial Management Office quarterly Federal Cash Transactions Reports (Standard Form 272) as prescribed in instructions provided to the Contractor and such other information concerning the financial operation of the Contractor's business as may be requested. The Contractor shall afford to the Contracting Officer or his representative proper facilities for inspection of the Contractor's books, records and accounts, at all reasonable times until the expiration of 3 years from the date of final payment under this contract.

(k) *Other Security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the Contracting Officer deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the Contracting Officer, to the extent that such additional security is available.

(b) The contracting officer, in consultation with General Counsel, may require special security provisions if appropriate in particular cases. For example, the following clause may be included if considered appropriate:

**Security for Advance Payments (October 1978)**

During the period of time that advance payments may be made hereunder and so long as any such advance payments remain unliquidated, the Contractor shall not mortgage, pledge, or otherwise encumber, or suffer to be encumbered, any of the assets of the Contractor now owned or hereafter acquired by him, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to the performance of this contract and with respect to which the Government has a lien hereunder, without the prior written consent of the Contracting Officer.

3. In Appendix J, J. 5000 and J. 5002 are revised as follows:

*J. 5000 Scope of Subpart.* This Subpart sets forth guidance for the preparation of an Advance Payments Determination and Findings to be made by the Director of Procurement.

*J. 5001 Advance Payments.* The following is the standard text of findings, determination and authorization for use in establishing advance payments with nonprofit institutions (including educational institutions).

**National Aeronautics and Space Administration, Washington, D.C.**

*Findings, Determination, and Authorization for Advance Payments*

1. I hereby find that:

a. The National Aeronautics and Space Administration and (contractor) ..... have entered (propose to enter) into negotiated Contract No. ..... for (purpose of the contract).)

(Summary of the specific facts and significant circumstances concerning the contract and contractor, which together with the other findings, will clearly support the determinations below.)

b. Advance payments in an amount not to exceed $..... are required by the contractor in order to perform under the contract. Such amount does not exceed the unpaid contract price.

c. The advance payments are necessary for prompt and efficient performance of the contract, which will benefit the Government.

d. The "Advance Payments" clause contains appropriate provisions for the protection of the Government's interest. This includes provisions that the Government will have a lien, paramount to all other liens, upon (i) the supplies contracted for, and (ii) any material or property acquired for the performance of the contract. Such security is deemed to be adequate.

e. The contractor is a nonprofit (educational) (and) (research) institution, and the contract is for (experimental) (,) (research and development) work, without profit to the contractor.

*Determination*

2. Upon the basis of the above findings, I hereby determine that the making of advance payments, without interest, is in the public interest.

*Authorization*

Advance payments in the amount of $..... are hereby authorized pursuant to 10 U.S.C. 2307. Outstanding payments may at no time exceed the unpaid contract price.

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Director of Procurement
Date: ———

Instructions:

1. A request for advance payment provisions will be prepared in final form (original and the official file copy (NASA Form 1267) and forwarded to the Director of Procurement, NASA Headquarters (Code HS–1) for approval. The request should include the following: (a) the name of the cognizant NASA Headquarters Program or Staff Office; (b) the negotiation exception to support the requirement, if it is other than 10 U.S.C. 2304(a)(5); (c) if a fee is contemplated, the estimated cost, amount and percent of fee, the total cost and fee, and the factors that were considered in determining the fee (see 3.808); and (d) the name and phone number of the contracting officer or negotiator.

2. A separate [Findings, Determination and Authorization for Advance Payments] will be prepared for each request for authorization of advance payments. Request to increase the amount of advance payments involving modifications, supplemental agreements or extensions to an existing contract on which advance payments previously have been authorized will clearly indicate the amount of the increase required, the previous amount authorized, and the new total.

3. Insert the appropriate words and phrases in the form set forth above.

4. Modifications to adapt to special facts and circumstances are permitted provided that they do not conflict with the statutory requirements set forth in 10 U.S.C. 2307 or other cited statutory authority.

5. 10 U.S.C. 2307 will normally be the statutory authority cited for authorizing advance payments. When appropriate, advance payments are also authorized pursuant to 42 U.S.C. 2473(c)(5) and pursuant to Public Law 85–804 as implemented by Executive Order 10789.

4. Supplement 3 is revised as follows:

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## Supplement No. 3—Property Administration

### Subpart 1—Introduction

#### S3.100 Scope of Supplement.

This Supplement is issued for the guidance of personnel engaged in the administration of contract provisions relating to Government property in the possession of contractors. It prescribes uniform procedures and techniques to (i) meet management data requirements of the Government, and (ii) to assure performance of property control to protect the interests of the Government at a minimum cost through a uniform property administration program.

#### S3.101 General.

This Supplement sets forth instructions to assure uniformity in the administration of contract provisions relating to Government property in the possession of contractors and is applicable to all NASA personnel having responsibilities in this area. It prescribes procedures and techniques to (i) meet management data requirements of the Government, and (ii) to assure performance of property control to protect the interests of the Government at a minimum cost through a uniform NASA property administration program. The scope of the program shall be determined by the amount of Government property, the complexity of the contractor's property control system, and other conditions revealed by review of the contract and correlation of its provisions with the property control system.

#### S3.102 Definitions.

As used in this Supplement, the following terms have the meanings stated below:

**S3.102-1** *Category* means a major segment of a contractor's property control system (*e.g.*, acquisition, receiving, records, storage and movement, consumption, utilization, maintenance, physical inventories, subcontractor control, and disposition).

**S3.102-2** *Characteristic* means a segment of a functional area subject to analysis or review. Characteristics are classified as Class I, which is subject to statistical sampling, and Class II, which is subject to judgment or observation techniques.

**S3.102-3** *Lot* means an aggregation of documents, records, articles, or actions selected for review due to common characteristics. For evaluation of the lot all characteristics for which a lot is tested must be common to all units within the lot.

**S3.102-4** *Supporting Responsibility* relates to the assignment of a subcontract, or a portion of a prime contract being performed at a secondary location of the prime contractor, to a property administrator other than the individual assigned to the prime location.

**S3.102-5** *Property Control System* identifies a contractor's internal management program encompassing the protection, preservation, accounting for and control of property from its acquisition through disposition.

#### S3.103 Responsibilities.

(a) The property administrator shall evaluate the contractor's management and control of Government property and ascertain whether the contractor is effectively complying with the contract and NPR provisions. These responsibilities include:

(i) developing and applying a system survey program for each contractor under his cognizance;

(ii) evaluating the contractor's property control system and approving or recommending disapproval of the system;

(iii) advising the administrative contracting officer of the contractor's noncompliance with approved procedures and other significant problem areas which he cannot resolve whether this information is obtained through a formal system survey or through other means and recommending appropriate action, which may include disapproval;

(iv) resolution of property administration matters as necessary with the contractor's management, personnel from Government procurement and logistics activities, and representatives of the NASA Management Audit Office, Defense Contract Audit Agency (DCAA) and of other Government agencies; and

(v) recognition of the functions of other Government personnel having cognizance of Government property, and obtaining their assistance when required. (These functions include, but are not limited to, contract audit, quality assurance, engineering, pricing, and other technical areas. Assistance and advice on matters involving analyses of the contractor's books and accounting records and on any other audit matters deemed appropriate shall be obtained from the cognizant auditor.)

(b) Property administrators' (or other Government industrial property personnel) participation in pre-award surveys/post-award orientations is required whenever significant amounts of government property will be involved in order to reveal and resolve property management problems early in the procurement cycle.

### Subpart 2—Initiation of Property Administration

#### S3.201 Control of Assignments.

(a) The Procurement Officer or his designee shall establish and maintain a Contract Assignment Control Register for each contractor, showing:

(i) the contractor's name and address;

(ii) contract number;

(iii) type of contract;

(iv) date of assignment of the property administrator and his name; and

(v) date of completion or rescission of the contract, or transfer of the property administrator.

(b) Property reported to have been received at a contractor's plant without contractual coverage shall be carried in a suspense file, pending investigation and resolution by the property.

843.202 Analysis of Contract and Establishment of Contract Property Control Data Files.

(a) The property administrator shall analyze each contract providing for Government property to estimate the property administration effort which must be applied. The analysis shall be sufficient to establish the management controls necessary for assuring compliance with contract requirements and the development of a suitable system survey program.

(b) A Property Summary Record shall be established by the property administrator containing the following information

(i) contractor s name and address, and the contract number;

(ii) type of contract, modifications (including change orders), and special or nonstandard clauses pertaining to Government property;

(iii) date of final review and date of execution and transmittal of the DD Form 1593;

(iv) supporting property administration assignments; and

(v) name(s) of the property administrator(s) and date(s) of tenure.

(c) The property administrator shall establish a Contract Property Control

Data file which shall include as a minimum:

(i) Property Summary Data Record;

(ii) copy of the contract or extract of provisions thereof pertinent to property administration, and comparable data regarding any subcontracts involving Government property;

(iii) record of initial review, evaluation, and approval of the contractor's property control system; and, if applicable, record of withdrawal of approval and basis therefor, reinstatement of approval, and deviations granted;

(iv) record of visits, property system surveys performed including appropriate work papers, deficiencies disclosed and corrective actions taken;

(v) contractor's receipts for Government property, when required;

(vi) record of final review and execution of property administrator's statement of closure of the contract property account;

(vii) other pertinent correspondence and documents, including as applicable, inventory adjustments, investigations, recommendations, and determinations;

(viii) records concerning supporting property administration delegations; assist actions involving special reviews; and other applicable reviews at subcontractor's plants;

(ix) records of inspection and audits performed by other activities; and

(x) reports relating to Government property prepared by the contractor pursuant to the contracts. When more than one contract is involved at the same contractor's location, records relating to more than one contract shall be transferred to a contractor's General File and the Property Summary Data Record shall be so annotated.

## Subpart 3—Evaluation and Approval of Contractor's Property Control System

### S3.301 General.

Normally, the initial contact by the Contract Administration Office with a contractor is through a post-award orientation conference or post-award letter. When a conference is held, the property administrator shall assure suitable discussion of property administration requirements, and responsibilities. When a conference is not held, the property administrator, upon assignment of a contract, shall forward a letter to the contractor:

(i) inviting attention to the contractor's responsibilities regarding Government property under the contract, including any specialized controls, and the extent of his liability for loss, damage or destruction of Government property during any period in which the contractor's property control system does not have the written approval of the property administrator;

(ii) requesting the name of the contractor's representatives to contact for review and discussion of the proposed property control system; and

(iii) requesting that policies, instructions and procedures necessary to fully implement the property control system be available for evaluation.

### S3.302 Initial Evaluation of the Contractor's Property Control system.

**S3.302–1** *Review of Procedures.* (a) Following assignment of an initial contract, the property administrator shall review the contractor's property control system to determine:

(i) inadequate or questionable areas in the proposed procedures for compliance with NPR Appendix B or C, and other contract requirements;

(ii) essential controls not provided by the proposed procedures;

(iii) areas in the proposed procedures requiring physical observation or verification; and

(iv) subcontractors, or secondary locations of prime contract performance, and the need for physical observation or verification of property controls at those locations.

(b) It is normal industry practice to provide for the control of property by means of written procedures that communicate company standards, techniques, and instructions to operational personnel for uniform application. However, a contractor with few employees may not have a need for written procedures for effective management of Government property. In such cases, the property administrator shall evaluate the adequacy of the contractor's system on the basis of the contractor's explanation of his controls and observation of the application thereof, and he shall prepare a brief description of the applicable procedures for inclusion in the Contract Property Control Data File. In the latter instance, the contractor's signature shall be obtained signifying his concurrence with the property administrator's written description.

(c) The contractor's plant may be visited to determine that his operation of the system provides adequate controls for the Government property to be furnished or acquired.

(d) The choice of the methods to be used to obtain the information necessary for approval of the contractor's property control system is a matter of judgment by the property administrator. Test examinations and verification in specific categories may be necessary to assure the reliability of the final evaluation and conclusions as to the acceptability of controls for all categories and the system as a whole.

(e) The property administrator shall examine the contractor's procedures to be used to determine the extent to which they meet the criteria for property control required by Appendix B or C and other contract requirements, as appropriate. He shall make necessary tests of the contractor's system, and as each portion is analyzed, the acceptability of the procedures shall be appropriately noted or commented upon as the basis for preparation of the record of system evaluation (see S3.302–4).

(f) When the contractor's property control system has previously been approved and a new contract requires the expansion of existing or the establishment of additional controls, the review should normally be limited to the new requirements. If the system is adequate, the property administrator shall record this fact on the Property Summary Data Record for the contract. Notification to the contractor is not required. However, if the property administrator determines that the contractor's property control system does not adequately meet the new contract requirements, the Property Summary Data Record for the contract involved shall be appropriately annotated and the contractor shall be notified in writing of the required changes.

(g) In the review of the contractor's property control system, the property administrator shall consider the provisions of B.311 or C.311 and shall assure that the contractor's system provides for maintenance of financial data and the furnishing of required reports within the time limits specified.

**S3.302–2** *Exit Interview with the Contractor.* Upon completion of the property administrator's review, he shall hold an exit interview with the contractor to discuss any category in which the adequacy of controls, or procedures was found to be defective and will advise where corrective action is required before an approval of the system can be granted. When the contractor is willing to correct a deficiency or questionable practice immediately, the documentation supporting the property administrator's findings and conclusions shall include a statement to this effect. The contracting officer responsible for the predominant value of NASA property at the facility shall also attend the exit interview with the contractor when major deficiencies

exist in the property control system, past deficiencies remain uncorrected, or the dollar value of the personal property involved is in excess of $1,000,000.

**S3.302–3** *Record of System Evaluation.* Upon completing his evaluation of the contractor's system, the property administrator shall prepare a written summary of his findings to support approval of the system or requirement for corrective action prior to such approval. A report of visit or other documentation may be utilized if the participating contractor and Government personnel are listed, actions taken are adequately described, and the property administrator's determination is clearly stated.

**S3.302–4** *Notification of Deficiencies.* The property administrator shall prepare a letter to the contractor for signature by the contracting officer who attended the exit interview, listing the deficiencies found during the evaluation of his property control system and noting any agreement by the contractor to correct deficiencies. The contractor shall be requested to respond within 30 days and to provide the precise action to be taken and the time required to correct each deficiency.

**S3.302–5** *Resolution of Differences.* When the contractor's response to the contracting officer's letter is unsatisfactory, the contracting officer, along with the property administrator, shall meet with the contractor in an effort to arrive at a corrective program that is mutually satisfactory. The contractor will be requested to confirm in writing any new commitments arising out of these discussions. In the event the contractor fails to correct deficiencies in his property control system within a reasonable period, the contracting officer will refer the matter by memorandum to appropriate levels of management within the NASA installation and Headquarters staff offices, depending on the criticality of the problem involved. The memorandum shall include:

(i) a specific, concise, and documented statement of the problem;

(ii) a statement of the contractor's position; and (iii) the recommended action.

**S3.302–6** *Letter of Approval.* (a) The approval of a contractor's property control system by the property administrator shall be conditioned upon a joint determination by the property administrator and the contracting officer who attended the exit interview, that no deficiencies exist in the property control system or that where minor deficiencies exist the contractor has agreed to take satisfactory corrective action.

(b) When the contractor's property control system is acceptable, the property administrator shall advise the contractor in writing. However, when the approval has been preceded by an exchange of correspondence between the contracting officer and the contractor (S3.302–5 and S3.302–6), the property administrator will make reference to the correspondence in his approval and advise the contractor that the corrective action taken or planned is acceptable. A copy of the letter of approval shall be sent to the contracting officer who attended the exit interview.

(c) When the contract involves Government property at subcontractor plants or prime contractor secondary locations, or both, and the controls for the property at such locations have been determined to be adequate, the approval shall be expanded to include the procedures governing Government property at such locations.

## Subpart 4—Property Administration During Contractor Performance

### S3.401 Property Administration Plan.

(a) A property administration plan shall be developed for each contractor's plan covering the property control system utilized in connection with Government contracts. The plan shall provide for surveys and shall be augmented to cover responsibilities imposed by new contracts, changing conditions, or marginal performance. In the event approval of the contractor's system is unduly delayed at inception of the contract due to failure of the contractor to provide an acceptable system, or is withdrawn due to unsatisfactory conditions disclosed after approval, the property administration plan shall be expanded to the degree necessary to reasonably assure that loss, damage or destruction of Government property is disclosed in a timely manner. Further, special attention shall be given to reasonably assuring that any loss, damage or destruction occurring during a period when a contractor's system is not approved is identified prior to approval or reapproval.

(b) The property administrator must exercise judgment in developing his plan and in determining what categories (see Annex I) of the contractor's property control system warrant examination. Limited dollar amounts and activity, types of property, complexity of the contractor's system, risk to the Government, and previous experience regarding the adequacy of contractor controls are factors determining the extent and scope of the system survey plan. Guidance is contained in S3.402–1(b) covering criteria for surveillance of a contractor's property control system.

### S3.402 System Survey.

**S3.402–1** *Surveillance.* A complete system survey shall be conducted at least once each calendar year to obtain thorough knowledge of the contractor's system of property control and his efficiency. Completion of a system survey, involving complex property control systems, may require detailed tests and evaluations over an extended period of time. If deficiencies in physical control or records are disclosed, corrective action must be secured, and the effectiveness of such correction evaluated. In such instances, test and evaluation of any one category shall be completed as expeditiously as possible, and the working papers and analysis retained for consideration and incorporation into the summary and survey case file.

**S3.402–2** *Scheduling and Planning.* (a) At the beginning of each calendar year, the property administrator shall prepare a schedule showing the names of the contractors and the projected dates on which each system survey shall be initiated and completed.

(b) Prior to initiation of any system survey, the property administrator shall establish a survey plan which shall provide, as a minimum:

(i) identification and listing of the categories, functional areas and characteristics to be evaluated (see Annex I);

(ii) evaluation of approved property control procedures applicable to the categories to be examined, and noting of any portions thereof that should be reviewed with operating personnel for possible updating. (If any functional area of the property control system is not covered by procedures, no attempt should be made to survey that area at that time, but that portion of the system should be recorded as unsatisfactory and action taken to correct the condition.); and

(iii) preparation of work papers necessary to document the file.

**S3.402–3** *Testing the System.* (a) *General.* In conducting tests of the contractor's property control system, the following factors should be considered to assure adequate coverage of requirements peculiar to particular classes of property and functional areas.

(b) *Materials.* Materials should be considered as bulk quantities, as contrasted to individual items. Examinations should be directed to:

(i) tracing inbound transportation units from (A) bills of lading or other

transportation documents to receiving reports, in order to determine that the receiving reports are accurately prepared and that proper action is taken on shortages, damages, or other discrepancies, and (B) stock records to assure that the receipts were accurately posted (see B.307 or C.307 as applicable);

(ii) abstracting nomenclature and balance data from stock records and making physical counts to determine accuracy of the stock records;

(iii) tracing posting of credits to (A) stock records (by date, reference number, and quantity) and (B) issue documents, in order to assure accuracy of the postings and validity of the documents (signature by authorized individual and indication of reasons for issue or point of delivery, or both, to indicate proper contract use); and

(iv) determining to the extent practicable at the point of receipt and use, whether undue quantities are issued, charged to cost, and held on plant floor rather than being held under better security in stores.

(c) *Custodial Items.* Issues shall be traced from store's records to tool cribs, office stock rooms, uniform rooms, and the like, to determine that they are taken into account as part of a sound control system. It should be determined that issues to contractor personnel are covered by tool chits, uniform slips, or other mechanisms designed to assure return, or ability to locate items which are to be returned, assuring that new items are not issued without return of worn-out items or that suitable explanation is provided.

(d) *End Items.* General Techniques for survey of materials are applicable to end items placed in storage pending shipment. Examination shall include tracing from Government acceptance records of the contractor's claims for reimbursement to physical quantities on hand and quantities on validated shipping documents.

(e) *Plant Equipment Costing Less Than $1,000.* In the event summary record accounting is utilized for this class of property, as authorized by B.306(d), examination using the "bulk quantities" approach in (b) above is applicable but shall also cover:

(i) identification as required by B.402 and B.404, respectively; for other than minor plant equipment, the identification number shall be physically verified; and

(ii) Location as prescribed in B.306(d)(vii), creating need for physical verification of presence or absence of the property in the location shown by the location record.

(f) *Plant Equipment Costing $1,000 or More.* Testing on an item-by-item basis is usually required to achieve desired results. Determinations demanding special attention include whether:

(i) Government screening and approval requirements are observed;

(ii) classification of property is accurate, both at time of requisition or purchase and at time of receipt through the use of the DSAH–4215 series of IPE Handbooks and Cataloging Handbooks H2–1, H2–2, and H2–3;

(iii) an item is actually applied to the requirement for which acquired, and, if deviation is made, that necessary notice and Government approval (when applicable) have been obtained;

(iv) receiving documentation is complete and accurate, indicating assignment of identification number, treatment of accessory and auxiliary equipment as required by B.306(b), and the DD Form 1342 (DoD Property Record) is prepared and processed when required by B.306–1;

(v) from physical inspection of the property, the equipment records are accurate, including location and classification as to use (examination shall be conducted from property to records and from records to property); and

(vi) disposition action is initiated as required when a piece of equipment is no longer required at the plant (examination shall include adequacy of procedure for the preparation and submission of DD form 1342 (Property Record) where specified, propriety of authority for shipment, and proper accounting for accessory and auxiliary equipment).

(g) *Special Test Equipment.* The examination of special test equipment shall be essentially the same as for plant equipment costing $1,000 or more except for recognizing the greater complexity of assemblies classified as single items and the possible need for assistance and advice of engineering personnel. Examinations shall include tracing of individual components into the assembly to assure a clear trail, particularly with respect to general purpose test equipment components, and propriety of disposition of components upon disassembly.

(h) *Special Tooling.* Testing for plant equipment, as in (e) and (f) above, may be used as a guide to establishment of the method and sampling to be utilized for special tooling. When option as to title to special tooling is involved under terms of the contract (see 13.704), examination need only be sufficient to comply with the request of the contracting officer.

(i) *Real Property.* After initial turnover of real property to a contractor, tests and examinations normally shall be directed to work orders of the contractor and documentation from Government sources as to additions and other capital improvements or disposals or capital decreases.

(j) *Scrap and Salvage.* Tests relating to scrap and salvage may be similar to those for materials as outlined in (b) above. However, special attention should be given to:

(i) tracing from credit entries on materials records (showing turn-in to scrap) to corresponding debits to scrap records;

(ii) determining from analysis of consumption of materials over a given period of time that the quantities indicated as being scrapped or spoiled are matched with comparable receipts in the scrap and salvage accounts; and

(iii) determining that when conversions of units of property to pounds of scrap or from estimated to scale weights or to other units of measure are made, the formula for the conversion is shown on the document affected, or is readily available in the approved contractor procedure.

(k) *Analyzing Consumption of Materials.* It shall be determined by both physical examination and analysis of records that quantities consumed are for proper purposes and in reasonable amounts. In analyzing consumption of component parts or other productive materials, unit allowance (equalling amount required per end-item plus mormal spoilage) for each line item of materials may be available in the contract, bill of materials, blueprints, or shop drawing of items fabricated, or in cost computations supporting the end-item price. If such unit allowance information is not available, technical personnel may be consulted as to whether quantities consumed are within accepted standards of the industry.

(l) *Testing of Physical Inventories.* The property administrator has the option of conducting his tests of the contractor's physical inventories either during the performance of the inventory or subsequent to its completion. In either event, tests shall evidence physical counts of selected items without knowledge of record balances, verification of the entries on count slips, comparisons with records, preparation of documents necessary to any adjustments required, approval of adjustments, and the referral of lists of adjustments to the property administrator pursuant to B.503.

(m) *Examination of Maintenance Program.* The actions scheduled shall be

traced to determine that they are or have been performed and that the actions stated by the contractor's procedures have been included. Also, the records of the maintenance or repair shop or the contractor's purchase orders shall be examined as to causes of breakdowns of equipment to determine whether they were the result of inadequate preventive or routine maintenance.

**S3.402–4** *Performing the Survey.* (a) In performing the survey, the property administrator shall follow the procedures in (b) through (e) below.

(b) The lost size shall be estimated. Insofar as possible, lots selected shall consist of current operations of the contractor, *i.e.:*

(i) those transactions (excepting disposition transactions) which have occurred during the last 90 days immediately preceding the date of sampling and the documents recording those actions. (If no transactions have taken place during the last 90 days, samples will be taken from transactions going back to the last system survey.) The lot should encompass the maximum number of units possible within a functional area. For example, transactions pertaining to special tooling, special test equipment, and plant equipment may be combined into a single lot and sampled for their common characteristics. Characteristics that are not common to units sampled shall be extracted for evaluation as a part of a separate lot. Sample sizes shall be selected from the attached table (Annex II);

(ii) articles in the possession or control of the contractor at that time; and

(iii) disposition actions occurring since the last occurring survey was made.

The lot should encompass the maximum number of units possible within a functional area. For example, transactions pertaining to special tooling, special test equipment, and plant equipment may be combined into a single lot and sampled for their common characteristics. Characteristics that are not common to units sampled shall be extracted for evaluation as a part of a separate lot. Sample sizes shall be selected from the attached (Annexs II).

(c) After the examinations are performed and the findings recorded, the findings shall be analyzed and the conclusions and recommendations recorded. Decisions as to satisfactory or unsatisfactory conditions shall be made for each lot at the functional area level.

(d) When any category is found to be unsatisfactory during a survey, the property administrator shall determine the effects upon the complete system. All other applicable categories shall be subjected to survey actions in order to ascertain the existence of other defective areas and the full scope of defectiveness in the overall system.

(e) Problems disclosed during the survey shall be discussed with the contractor's personnel as they are noted, or during the exit interviews. Every effort shall be made to resolve differences on an informal basis. Resolved problem areas shall be reported in the record of system evaluation with the notation that they were corrected.

**S3.402–5** *Summary.* A formal record shall be prepared by the property administrator at the conclusion of each system survey in the format set fourth below:

(i) *Introduction:* contractor's name and address, period of survey, and types of property involved;

(ii) *Method used:* explain method of performing the survey;

(iii) *Conclusions:* state conclusions reached (In event of finding of unsatisfactory categories, functional areas or characteristics, identify the defects found.); and

(iv) *Action required:* state actions, if any, necessary to correct unsatisfactory conditions. A summary of the system survey shall be fowarded to the contractor. The contractor shall be advised of any unsatisfactory conditions and requested to correct them within the time limitations agreed to during the exit interview. The contractor shall also be advised by letter that failure to correct the unsatisfactory conditions may result in disapproval of his property control system. A copy of the summary shall also be retained in a survey case file, and whenever unsatisfactory conditions have been disclosed, a copy of the summary shall be provided to the administrative contracting officer. When conditions dictate, *i.e.,* indication of significant noncompliance with contract requirements or other continued failures jeopardizing the interest of the Government, the purchasing office and the pre-award survey monitor shall also be advised in writing.

**S3.402–6** *Correction of Unsatisfactory Conditions.* In the case of disclosure of unsatisfactory conditions, the property adminstrator shall maintain follow-up to ascertain that corrective action is taken. In the event the contractor fails to take corrective action or to respond to the letter forwarded as prescribed in S3.402–5 above, the property administrator shall proceed in accordance with S3.302–6 and 13.403–1.

**S3.402–7A** *Survey Case File.* A case file shall be established for each system survey performed, containing the survey plan, work papers, and the summary. The case file shall be maintained in the Contract Property Control Data File or the Contractor's General File.

**S3.402–8** *Statistical Sampling.* (a) *General.* Statistical sampling is a tool to support the property administrator's judgment; it does not supplant his judgment. Statistical sampling is accomplished by examination of characteristics, as to defects, in order to evaluate and determine the performance level for each functional area and category within each property control system. The lot should encompass the maximum possible number of line items of property, records and documents. Care should be exercised, however, to assure that the items in the lot have common characteristics and that the same control elements of the property control system apply; otherwise, more than one lot will be necessary. Items selected for sampling may be used to examine characteristics of more than one category (*i.e.,* items selected under records may be used to examine characteristics of acquisition, stock control, storage and movement, maintenance, physical inventory, utilization, and consumption).

(b) *Use of Statistical Sampling Plans.* The Government's risk shall not exceed 10% (a 90% confidence level) excepting any slight variations due to changes in lot sizes. Annex II contains sampling plans for use in achieving a confidence level of 90 percent. Annex III is a table of random numbers which may be used. The number of samples examined shall be equal to the sample size given in the table. If the number of defective sample units found is equal to or less than the number in Column S for the lot size involved, the lot shall be considered satisfactory. If the number of defective sample units is equal to or greater than the number in Column U for the lot size involved, it shall be considered unsatisfactory.

(c) *Random Number Table.* The following information is a guide which may be used in drawing a sample with a table of random numbers. Other randomization techniques may be applied *provided* they are defined beforehand in the property administration survey plan and exhibit clear protection against bias. Care must be exercised to assure that the number of items in the lot is not overestimated so as to avoid selection of random

numbers greater than the lot. For example, if the lot is 9,000, only numbers lower than 9,001 shall be selected. Using a random table to draw a random sample requires four steps which are:

(i) *First Step:* A pattern must be established between the numbers in the table and items in the lot to be sampled. It is possible to use the whole random number or any portion thereof. For instance, the number 18,967 may appear in the table. If the lot size is more than 99 but less than 1,000, a three digit number is required and either the first three digits (189) or the last three (967) may be used. If the lot size is more than 999 but less than 10,000, a four digit number is required and either the first four digits (1,896) or the last four (8,967) may be used. Once this pattern has been established, it must be consistently used throughout the sample selection process.

(ii) *Second Step:* A procedure for selecting the numbers from the table must be selected. Any systematic path for going through the table, if the path is clear and does not cross over or re-use any number previously used, is acceptable. It is possible to proceed across rows, down columns, diagonally, clockwise, counterclockwise, or in some combinations of these methods; however, it is usually desirable to choose a simple pattern and go down columns or across rows.

(iii) *Third Step:* The starting point in the table shall be selected at random. The most used method is to open the table of random numbers to any page and to use the number upon which the pencil point falls as the starting point.

(iv) *Fourth Step:* Beginning at the starting point and proceeding through the table as planned in the Second Step, record the numbers found in succession in the table, using all or part of the number as planned in the First Step. Duplicate numbers shall be skipped. The selection process shall be continued until the required sample size is drawn.

Numbers taken from the random table shall be arranged and recorded in numerical order. If the units of the lot to be examined are already consecutively numbered, the units having the numbers corresponding to those taken from the random table become the sample units. Otherwise, the sample units shall be found by counting to the numbers taken from the random table.

**S3.403 Additional Administrative Responsibilities.**

The initial review, evaluation, and subsequent visits should provide the property administrator with a reasonable indication of future workload with each contractor. Loss, damage, destruction, or excessive consumption of Government property (see S3.602) are areas which demand significant and prompt attention by the property administrator. This is particularly important in the case of a contractor whose system is in an unapproved status.

**S3.404 Declaration of Excess Property.**

A problem area often disclosed by systems surveys is the failure of a contractor to comply with B.101(d) or C.101(e) in the reporting of Government property which is not needed (is excess) in performance of the contract. The property administrator shall fully document and report any such finding to the administrative contracting officer. After a report of excess received from a contractor has been referred to the plant clearance officer for screening and ultimate disposition, the property administrator shall maintain follow-up to assure prompt disposition action. For centrally reportable plant equipment, the property administrator shall:

(i) assure the preparation and submission of individual reports (DD Form 1342) required of the contractor pursuant to B.306–1 and C.306–1;

(ii) accomplish such verifications as necessary to permit certifications required by the forms; and

(iii) transmit the report to the NASA contracting officer, Attention: Industrial Property Specialist.

**S3.405 Identification of Industrial Plant Equipment.**

Contractors acquiring or possessing Government-owned industrial plant equipment (IPE) shall provide prenumbered identification media (metal plates and decals) with the designation "NASA Property" and serial number(s) for identification of IPE pursuant to B.404 and C.404. The property administrator shall, within the framework of the contract, ensure that contractors affix the permanent identification number to each item of IPE at time of receipt. The property administrator shall make arrangements with the contractors to reidentify IPE already in their possession with the permanent number at the time of the regularly scheduled inventory or at some time as agreed to between the property administrator and the contractors involved.

## Subpart 5—Closure of Contracts

**S3.501 Completion or Termination.**

Upon completion or termination of a contract, the property administrator shall:

(i) monitor the actions of the contractor in returning excess Government property not referred to the plant clearance officer; and

(ii) advise the cognizant plant clearance officer as to the existence at a contractor's plant of residual property requiring disposal.

**S3.502 Final Review and Closing of Contracts.**

(a) When informed that disposition of Government property under a contract has been completed, the property administrator shall perform a final review which shall include a signed determination that:

(i) disposition of Government property has been properly accomplished and documented;

(ii) adjustment documents, including request of the contractor for relief from responsibility, have been processed to completion;

(iii) proceeds from disposals or other property transactions, including adjustments, have been properly credited to the contract or paid to the Government as directed by the contracting officer;

(iv) all questions as to title to property fabricated or acquired under the contract have been resolved and appropriately documented; and

(v) the Contract Property Control Record File is complete and ready for retirement.

(b) When final review pursuant to (a) above reveals that such action is proper, the property administrator shall accomplish and sign a DD Form 1593, *Contract Administration Completion Record.*

(c) The executed DD Form 1593 shall be forwarded to the contracting officer and the Property Summary Data Record shall be so annotated, and shall be retired with the contract file.

## Subpart 6—Special Subjects

**S3.601 Government Property at Alternate Locations of the Prime Contractor and Subcontractor Plants.**

**S3.601–1** *General.* (a) Government property provided to a prime contractor may be located at other plants of the prime contractor or at subcontractor locations. The prime contractor is accountable and responsible to the Government for such property and shall assure that the records and controls of such property comply with the provisions of NPR Appendix B or C, as appropriate.

(b) A Government property administrator cognizant of the location where the property is situated shall

normally be designated to perform required surveys of the property control system and exercise surveillance over such property as a supporting responsibility.

**S3.601–2** *Request for Supporting Property Administration.* (a) When the property administrator determines that supporting property administration is required, he shall direct a written request to the cognizant contract administration office asking that a property administrator be assigned. The request for supporting property administration shall include:

(i) the name and address of the prime contractor;

(ii) the prime contract number;

(iii) the name and address of the alternate location of the prime contractor, or of the subcontractor where the property is to be located;

(iv) a listing of the property to be furnished, or, if property is to be acquired locally, a statement to this effect; and

(v) a copy of the subcontract or other document under which the property is to be furnished or acquired.

(b) Concurrent with the action cited in (a) above, the property administrator shall ascertain whether the prime contractor will perform the necessary reviews and surveillance with his own personnel, or elects to rely upon the system approval and continuing surveillance by a supporting property administrator, of the property control system at the alternate location or subcontractor plant. If the prime contractor indicates that he will accept the findings of a supporting property administrator, a statement in writing to that effect shall be obtained. If the prime contractor does not so elect, he shall be required to perform the requisite reviews and surveillance and document his actions and findings.

**S3.601–3** *Request for Occasional Assistance.* (a) If a single item or limited quantities of property will be so located, the property administrator may determine that supporting property administration is unnecessary, *provided:*

(i) that the prime contractor's records shall adequately reflect the location and use being made of such property;

(ii) the nature of the property is such that the possibility of its use for unauthorized purposes is unlikely; and

(iii) the nature of the property is such that a program of preventive maintenance is not required.

(b) When supporting property administration will not be requested, the services of a property administrator in the contract administration office cognizant of the site where the property is located may be requested on an occasional basis to perform special reviews or such other support as may be necessary. Repeated requests for such assistance indicate a requirement for requesting supporting property administration.

**S3.602 Loss, Damage, or Destruction of Government Property.**

**S3.602–1** *General.* Normally, contract provisions provide for assumption of risk of loss, damage, or destruction of Government property as described in (a) through (f) below:

(a) Advertised and certain negotiated fixed-price contracts provide that the contractor assumes the risk for all Government property provided thereunder (see 13.702(a)).

(b) Other negotiated fixed-price contracts provide that the contractor assumes the risk for all Government property provided thereunder, with the exception of loss, damage, or destruction due to causes listed under the "excepted perils" of the clause set forth in 13.702(b) and in connection with which there was not willful misconduct or lack of good faith of any of the contractor's managerial personnel as defined therein.

(c) Cost-reimbursement supplies and services contracts (see 13.703) and cost-reimbursement and fixed-price research and development contracts with nonprofit institutions (see 13.707 and 13.706, respectively) provide that the Government assumes the risk for all Government property provided thereunder when there is no willful misconduct or lack or good faith or any of the contractor's managerial personnel as defined in the terms of the contract.

(d) There are certain events for which the Government does not assume the risk of loss, damage, or destruction of Government property, such as risks which the contract expressly requires the contractor to insure against. Therefore, contract clauses should be thoroughly reviewed and understood before a conclusion is reached by the property administrator or a determination made by the contracting officer. Advice shall be obtained from appropriate legal counsel on questions of legal meaning or intent.

(e) "Willful misconduct" may involve any intentional or deliberate act or failure to act which causes, or results in, the loss, damage, or destruction of Government property.

(f) "Lack of good faith" may involve gross neglect or disregard of the terms of the contract or of appropriate directions of the contracting officer or his authorized representatives. Examples of lack of good faith may be demonstrated by the failure of the contractor's managerial personnel to establish and maintain proper training and supervision of employees and proper application of controls in compliance with instructions issued authorized Government personnel.

(g) In the event any portion of the contractor's system is found to be unsatisfactory, increased surveillance of the deficient portion will be instituted to prevent, to the extent possible, any loss, damage or destruction of Government property. Further, special attention shall be given to reasonably assuring that any loss, damage or destruction occurring during a period when a contractor's system is not approved is identified prior to approval or reinstatement of approval.

**S3.602–2** *Loss, Damage, or Destruction of Government Property While in Contractor's Possession or Control.* (a) The property administrator shall require the contractor to report to him all cases of loss, damage, or destruction of Government property in his possession or control (including such property in the possession or control of his subcontractors) as soon as such fact becomes known.

(b) When physical inventories, consumption analyses, or other actions disclose (i) consumption of Government property which is considered unreasonable by the property administrator, or (ii) loss, damage, or destruction of Government property which has not been reported by the contractor, the property administrator shall prepare a statement of the items and amount of loss involved. This statement shall be furnished to the contractor for investigation and submission of a written statement to the property administrator relative to the incidents reported.

(c) The contractor's report and statement referenced in (a) and (b) above shall contain factual data as to the circumstances surrounding the loss, damage, destruction, or excessive consumption, including the following:

(i) the contractor's name and the contract number;

(ii) description of items lost, damaged, destroyed, or unreasonably consumed;

(iii) cost of property lost, damaged, destroyed, or unreasonably consumed and cost of repairs in instances of damages (in event actual cost is not known, use reasonable estimate);

(iv) date, time (if pertinent) and cause or origin of the loss, damage, destruction, or consumption;

(v) known interests in any commingled property of which the

Government property lost, damaged, destroyed, or unreasonably consumed is (or was) a part;

(vi) insurance, if any, covering the Government property or any part of interest in any commingled property;

(vii) actions taken by the contractor to prevent further loss, damage, destruction, or unreasonable consumption and to prevent repetition of similar incidents; and

(viii) other facts or circumstances relevant to determination of liability and responsibility for repair or replacement.

(d) The property administrator shall investigate the incident to the degree required to reach a valid and supportable conclusion as to (i) liability of the contractor for the loss, damage, destruction, or unreasonable consumption under the terms of the contract, and (ii) the course of action required to conclude the adjustment action. When required, the assistance of the quality assurance representative, the industrial specialist, the insurance officer, legal counsel or other technician will be secured. When the contractor acknowledges liability, the property administrator shall forward a copy of the credit memorandum or other adjusting document to the administrative contracting officer and auditor, if appropriate, to assure proper credit. In the event analysis of contract provisions and circumstances establishes that the loss, damage, destruction, or consumption constitutes risks assumed by the Government, the property administrator shall so advise the contractor in writing, thereby relieving the contractor of responsibility for the property. A copy of the documentation and notification to the contractor shall be retained in the Contract Property Control Data File for the contract.

(e) If the property administrator concludes that the contractor should be liable for the loss, damage, destruction, or unreasonable consumption of Government property, he shall forward the complete file with his conclusions and recommendations to the contracting officer for review and determination. The file shall contain:

(i) a statement of facts as supported by investigation;

(ii) recommendations as to contractor's liability, and the amount thereof;

(iii) recommendations as to action to be taken with regard to third party liability, if appropriate;

(iv) requirements for disposition, repair, or replacement of the damaged property; and

(v) other pertinent comments.

A copy of the determination shall be furnished to the contractor, to the property administrator, and a copy shall be retained in the files of the contracting officer. The property administrator's copy shall be filed in the Contract Property Control Data File for the contract when all pertinent actions, such as compensation to the Government or repair or replacement of the property, have been completed.

**S3.603** *Financial Reports.*

(a) The property administrator is responsible for obtaining appropriate financial reports as prescribed in B.311 and C.311 for all contracts assigned to him. Reports shall be accumulated and reviewed. Contractors are required to submit separate reports on each contract which contain the property reporting clause (7.104–54) except as noted in Appendices B and C, Attachment 3, paragraph 4(c). The reports shall be distributed in accordance with the procedures outlined in paragraph (b) below.

(b) Three copies of each of the contractor's annual property financial reports (NASA Form 1018), shall be reviewed, signed and forwarded by the property administrator to the contracting officer or his designee, as identified in the property reporting clause, within ten days after receipt. The contracting officer, or his designee, will immediately forward one copy of each report to the cogizant financial management office and one copy to the Director of Supply and Equipment Management Division (Code BE–5), NASA Headquarters, Washington, D.C. 20546.

## Subpart 7—Contractor Utilization of Government IPE

**S3.701 Utilization Surveys.**

(a) Responsibility for assuring that the contractor has effective procedures to evaluate Industrial Plant Equipment (IPE) utilization rests with the property administrator. However, when necessary, the contract administration office shall provide specialists qualified to perform the technical portion of utilization surveys to assist the property administrator in determining the adequacy of the contractor's IPE procedures.

(b) Upon assignment of an initial contract under which Government-owned IPE is to be provided to a contractor, the property administrator shall require the contractor, in accordance with B.603 or C.603, to establish procedures and techniques for controlling the utilization of Government-owned IPE. The property administrator, with the assistance of technical specialists, if necessary, shall evaluate the procedures established by the contractor for effective utilization of IPE. A record of the evaluation shall be prepared and become a part of the property administration file. If the procedures are determined inadequate, the record shall identify the deficiencies and the corrective actions necessary. In the event the deficiencies are not corrected by the contractor, the property administrator shall promptly refer the matter to the contracting officer.

(c) Follow-up surveys of the contractor's utilization procedures related to Government-owned IPE shall be performed at least annually. At contractor facilities having a substantial quantity of IPE items, the surveys should normally be conducted on a continual basis, reviewing equipment utilization records and physically observing a group of preselected items during each portion of the survey. Such follow-up surveys shall be conducted to the degree determined necessary considering the findings or prior surveys and the contractor's performance history in identifying and declaring equipment excess to authorized requirements. The contractor shall be required to support the retention of all Government-owned IPE by data keyed to specific Government programs. Maximum use will be made of contractor's machine loading data, order boards, production planning records, and machine time records and other production control methods.

(d) Special surveys shall be conducted when a significant change occurs in the contractor's production schedules. Examples of such changes are terminations, completion of contracts or major adjustments in programs. Special surveys may be limited to a given department, activity, or division of a contractor's operation.

(e) In the absence of adequate justification for retention, Government-owned IPE will be identified and reported in accordance with Part 24. Items which are part of approved inactive package plants, standby lines or active base packages are exempted from utilization surveys. The contract administration office shall ascertain periodically whether existing authorizations for standby, lay-away, and other mobilization requirements are current.

(f) Recommendations for contractor action to correct or improve controls shall be discussed by the property administrator with contractor managerial personnel to reach

agreement as to corrective action. When action by the contractor is recommended, follow-up shall be maintained to assure that appropriate action is taken. In event satisfactory resolution cannot be reaches, the matter shall referred to the NASA contracting officer.

**S3.702 Records of Surveys.**

The property administrator shall prepare a record incorporating written findings, conclusions and recommendations at the conclusion of each survey. Where appropriate, the record of the property administrator may be limited to a statement expressing concurrence with the reports of other specialists. One copy of each record shall be retained in the property administration file. Additional copies shall be prepared and distributed as findings and conclusions may necessitate.

**S3.703 Scope of Survey.**

The following matters are among those which shall be considered and used to the extent applicable in preparing for, conducting and recording the results of the IPE Utilization Surveys:

(i) identification of contracts under which IPE was furnished or acquired;

(ii) number and dollar value of IPE items in contractor's possession;

(iii) adequacy of equipment usage records;

(iv) identification of contracts for which use of IPE is authorized;

(v) other authorized use (Government or commercial) of the IPE, whether required approvals have been obtained, and whether rental payment is required;

(vi) planned machine loadings (including performance of a physical review of selected IPE items);

(vii) whether contractor-owned equipment of like function is loaded prior to loading Government-owned IPE;

(viii) items reported by quality assurance representatives or other personnel to be in a questionable use and utilization status; and

(ix) items of plant equipment that may be made available for other use by combining work of two or more machines on a single machine with low utilization rate. In such case the survey record should indicate the date the DD Form 1342, DoD Property Record, was forwarded to the NASA contracting officer.

[FR Doc. 79-17666 Filed 6-6-79; 8:45 am]

BILLING CODE 7510-01-M

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Public Health Service

### 42 CFR Part 57

### Health Professions Student Loans

**AGENCY:** Public Health Service, HEW.

**ACTION:** Correction to Final Regulations.

**SUMMARY:** This is a correction to the Final Regulations issued by the Department of Health, Education, and Welfare on May 18, 1979 (44 FR 29053) (FR Doc 79-15450) for the Health Professions Student Loan Program under sections 740-744 of the Public Health Service Act. The purpose of the correction is to add several clarifying phrases to one section.

**EFFECTIVE DATE:** This correction is effective on June 7, 1979.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Alice Swift, Associate Director for Planning, Evaluation, and Legislation, Division of Manpower Training Support, Bureau of Health Manpower, Health Resources Administration, 3700 East-West Highway, Center Building, Room 9-50, Hyattsville, MD. 20782 (telephone 301-436-6383).

**SUPPLEMENTARY INFORMATION:** The Final Regulations published on May 18 (44 FR 29053) inadvertently omitted three phrases in § 57.206 designed to clarify provisions regarding (1) how to determine "resources" when establishing the eligibility of medical and osteopathic students, and (2) how to select loan applicants. Consequently, § 57.206 as published on May 18 is deleted, and replaced as set forth below.

Dated: June 1, 1979.

**Joseph A. Califano, Jr.,**

*Secretary.*

## PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

**§ 57.206 Eligibility and selection of health professions student loan applicants.**

(a) *Determination of eligibility.* (1) Applicants are eligible for consideration for a health professions student loan if they are:

(i) Nationals of the United States, permanent residents of the Trust Territory of the Pacific Islands or the Northern Mariana Islands or lawful permanent residents of the United States, Puerto Rico, the Virgin Islands or Guam;

(ii) Enrolled, or accepted for enrollment in the school as full-time students;

(iii) In need of the amount of the loan to pursue a full-time course of study at the school; and

(iv) Of exceptional financial need in the case of students of medicine or osteopathy who will graduate after June 30, 1979. A student will be considered to demonstrate exceptional financial need if the school determines that his or her resources, as described in § 57.206(b)(1), do not exceed the lesser of $5,000 or one-half of the costs of attendance at the school. Summer earnings, educational loans, veterans (G.I.) benefits and earnings during the school year will not be considered as resources in determining whether an applicant meets the eligibility criteria for exceptional financial need.

(2) The school must provide written notification to each applicant of the provisions of section 741(f) of the Act under which the Secretary may repay all or part of a loan.

(b) *Selection of applicants.* The school will select qualified applicants, including medical and osteopathic applicants, and determine the amount of student loans by considering:

(1) The financial resources available to the student by using one of the national need analysis systems or any other procedure approved by the Commissioner of Education and published under 45 CFR 144.13 in combination with other information which the school has regarding the student's financial status. The school must take into account, regardless of the tax status of the student, the expected contribution from parents, spouse, self or other family members; and

(2) The costs reasonably necessary for the student's attendance at the school, including any special needs and obligations which directly affect the student's ability to attend the school on a full-time basis. The school must document the criteria used for determining these costs.

(c) *Selection of medical and osteopathic student applicants.* In addition to the factors in § 57.206(b), the school must select medical and osteopathic students graduating after June 30, 1979, based on the order of greatest need, taking into consideration the other resources available to the student through the school. For purposes of establishing priority for selecting medical and osteopathic student applicants to receive health professions student loans, summer earnings, educational loans, veterans (G.I.) benefits, and earnings during the school

year will be considered as financial resources.

[FR Doc. 79-17678 Filed 6-6-79; 8:45 am]
BILLING CODE 4110-83-M

## NATIONAL SCIENCE FOUNDATION

### 45 CFR Part 670

### Conservation of Antarctic Animals and Plants

**AGENCY:** National Science Foundation.

**ACTION:** Final regulations.

**SUMMARY:** The National Science Foundation issues regulations to conserve and protect animals and plants native to Antarctica, pursuant to the Antarctic Conservation Act of 1978, Pub. L. 95-541. These regulations apply to all United States citizens in Antarctica and to everyone importing into or exporting from the United States designated Antarctic animals and certain Antarctic plants or parts of them. The purpose of the regulations is to protect Antarctic ecological systems in accordance with measures which have been internationally established. Civil and criminal penalties for noncompliance are provided in the Act.

These regulations designate native animals and plants and designate areas where activities are restricted. They also establish a system of permits to take native animals, to collect certain plants, to import into or export from the United States Antarctic animals and certain Antarctic plants, to introduce non-indigenous species into Antarctica, and to restrict entry into certain areas of Antarctica.

Measures to restrict the discharge and disposal of pollutants in Antarctica will be the subject of separate regulations at a later date.

**EFFECTIVE DATE:** July 1, 1979.

**FOR FURTHER INFORMATION CONTACT:** Dr. Edward P. Todd, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone: 202-632-4024.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the Antarctic Conservation Act is to implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora". The Agreed Measures were developed by the Antarctic Treaty Consultative Parties under the Antarctic Treaty of 1959. The Agreed Measures recommend establishment of a permit system for various activities in Antarctica and designation of certain mammals and certain geographic areas as requiring special protection. These regulations meet the requirements of the Agreed Measures and related measures recommended under the Treaty.

Subpart A of these regulations sets forth their purpose and scope and defines terms used in these regulations. Prohibited acts and exceptions to them are discussed in Subpart B. The procedures for obtaining a permit and the terms and conditions of such permits are set forth in Subpart C. Subpart D designates as native mammals or native birds all mammals and birds found in Antarctica, except whales regulated by the International Whaling Commission. Activities involving these designated mammals or birds require a permit. More restrictive requirements for mammals and birds designated as Specially Protected Species are set forth in Subpart E. Areas of outstanding ecological interest are designated as Specially Protected Areas in Subpart G. No one may enter these areas or collect any native plants in these areas without a permit. Native plants are designated in Subpart F. Animal and plant fossils are not covered by these regulations. Areas of unique scientific value that need protection from interference are designated as Sites of Special Scientific Interest in Subpart H. Entry into certain of these areas without a permit is also prohibited. Conditions under which Antarctic animals and birds and certain Antarctic plants may be imported into or exported from the United States are set forth in Subpart I. Finally, Subpart J sets forth conditions where the introduction into Antarctica of non-indigenous plants and animals is permitted.

The Antarctic Conservation Act does not supersede the requirements of the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, or the Migratory Bird Treaty Act. Applications for permits involving native mammals or native birds covered by those acts will be forwarded to the agencies that administer them. If they disapprove the application, no permit will be issued under these regulations. If the permit is approved by the appropriate agency, the Director still must determine whether to issue a permit pursuant to these regulations. Civil and criminal penalties may be imposed not only under the other acts but also under the Antarctic Conservation Act.

On March 6, 1979, proposed regulations to implement the Act were published. Of the four comments received, two noted that these regulations apply to many animals which are already protected by other legislation. The Act makes clear that Congress was aware of this duplication. The Act, seeking to reduce the possible burden on the public, requires the National Science Foundation to forward any application it receives to the appropriate agency when that application involves animals protected under other legislation. This procedure is set forth in § 670.11(f) of this part.

Of the other two letters, only one raised substantive problems. This letter questions whether a carrier moving Antarctic plants and animals in contravention of the Act is "transporting" these products. Transportation within the meaning of the Act applies to the individual or individuals who, knowing that such transportation has not been authorized, nonetheless place the Antarctic animals or plants in the transportation system. A carrier having no knowledge that such transportation is unauthorized would not commit a violation of the Act.

Although not expressly addressed in the public comments, there is a concern that the prohibition on transporting Antarctic animals and certain Antarctic plants without a U.S. permit could interfere with international cooperation. For example, U.S. aircraft or vessels frequently transport specimens from Antarctica to foreign countries—specimens which have been taken or collected pursuant to a permit issued by the foreign government. Similar problems may exist when the U.S. transports non-indigenous plants and animals to Antarctica for a foreign government. A new § 670.8 has been added to this part which would create an exception for such transportation or introduction. The exception would only apply to transportation or introduction by a U.S. Government agency on behalf of a foreign national who holds a permit from a foreign government. This exception would not apply to importation into the United States.

A new Part 670 is added Title 45 CFR, Chapter VI to read as follows:

## PART 670-CONSERVATION OF ANTARCTIC ANIMALS AND PLANTS

### Subpart A—Introduction

Sec.

670.1 Purpose of regulations.
670.2 Scope.
670.3 Definitions.

### Subpart B—Prohibited Acts, Exceptions

670.4 Prohibited Acts.
670.5 Exceptions in extraordinary circumstances.
670.6 Prior possession exception.
670.7 Food exception.
670.8 Foreign Permit Exceptions.

670.6 Prior possession exception.
670.7 Food exception.
670.8 Foreign Permit Exceptions.

**Subpart C—Permits**

670.9 Application for permits.
670.10 General issuance criteria.
670.11 Permit administration.
670.12 Conditions of permits.
670.13 Modification, Suspension and Revocation.
670.14 [Reserved]

**Subpart D—Native Mammals and Native Birds**

670.15 Specific issuance criteria.
670.16 Content of permit applications.
670.17 Designation of native mammals.
670.18 Designation of native birds.
670.19 [Reserved]

**Subpart E—Specially Protected Species of Mammals and Birds**

670.20 Specific issuance criteria.
670.21 Content of permit applications.
670.22 Designation of specially protected species of mammals and birds.
670.23 [Reserved]

**Subpart F—Native Plants**

670.24 Specific issuance criteria.
670.25 Content of permit applications.
670.26 Designation of native plants.
670.27 [Reserved]

**Subpart G—Specially Protected Areas**

670.28 Specific issuance criteria.
670.29 Content of permit applications.
670.30 Designation of specially protected areas.
670.31 [Reserved]

**Subpart H—Sites of Special Scientific Interest**

670.32 Specific issuance criteria.
670.33 Content of permit applications.
670.34 Designation of sites of special scientific interest and management plans for those sites.
670.35 [Reserved]

**Subpart I—Import Into and Export From the United States**

670.36 Specific issuance criteria for imports.
670.37 Specific issuance criteria for exports.
670.38 Content of permit applications.
670.39 Entry and exit ports.
670.40 [Reserved]

**Subpart J—Introduction of Non-Indigenous Plants and Animals**

670.41 Specific issuance criteria.
670.42 Content of permit applications.
670.43 Conditions of permits.
670.44 [Reserved]

**Authority:** Sec. 11, Pub. L. 81–507, 64 Stat. 149 (42 U.S.C. 1870) as amended; Pub. L. 95–541, 92 Stat. 2048 (16 U.S.C. 2401).

## Subpart A—Introduction

### § 670.1 Purpose of regulations.

The purpose of these regulations is to conserve and protect the native mammals, native birds and native plants of Antarctica and the ecosystem upon which they depend and to implement the Antarctic Conservation Act of 1978, Pub. L. 95–541.

### § 670.2 Scope.

These regulations apply to:

(a) Taking any mammal or bird native to Antarctica,

(b) Collecting any plant native to Antarctica in a specially protected area,

(c) Entering any specially protected area or site of special scientific interest,

(d) Importing into or exporting from the United States any mammal or bird native to Antarctica or any plant collected in a specially protected area, and

(e) Introducing into Antarctica any non-indigenous plant or animal.

### § 670.3 Definitions.

In this part:

"Act" means the Antarctic Conservation Act of 1978, Pub. L. 95–541, 92 Stat. 2048 (16 U.S.C. 2401 et. seq.)

"Agreed Measures" means the Agreed Measures for Conservation of Antarctic Fauna and Flora, as recommended for approval at the Third Antarctic Treaty Consultative Meeting, and as amended in accord with Article IX (1) of the Treaty.

"Antarctica" means the area south of 60 degrees south latitude.

"Collect" means to cut, sever, or move any native plant, or to attempt to engage in any such action.

"Director" means the Director of the National Science Foundation, or an officer or employee of the Foundation designated by the Director.

"Foreign person" means any individual who is a citizen or national of a foreign nation; any corporation, partnership, trust, association or other legal entity existing or organized under the laws of a foreign nation; any department, agency, or other instrumentality of any foreign nation and any office, employee, or agent of any such instrumentality.

"Management plan" means the restrictions applicable to activities in Sites of Special Scientific Interest.

"Native bird" means a member of any species of the class *Aves*, which is indigenous to Antarctica or occurs there through natural agencies of dispersal that is designated in Subpart D of this Part. It includes any part, product, egg, or offspring of or the dead body or parts thereof excluding fossils.

"Native mammal" means a member of any species of the class Mammalia, except species regulated by the International Whaling Commission, which is indigenous to Antarctica or occurs there through natural agencies of dispersal that is designated in Subpart D of this part. It includes any part, product, egg, or offspirng of or the dead body or parts excluding fossils.

"Native plant" means any kind of vegetation at any stage of its life cycle indigenous to Antarctica or occurring there through natural agencies of dispersal, including seeds but excluding fossils, that is designated in Subpart F of this part.

"Site of Special Scientific Interest" means an area of unique value for scientific investigation designated in Subpart H of this part as needing protection from interference.

"Specially Protected Area" means an area of outstanding scientific or ecological interest designated in Subpart C of this part.

"Specially Protected Species" means any species of native mammal or native bird that is approved by the United States for special protection under the Agreed Measures and is designated in Subpart E of this part.

"Take" means to remove, harass, molest, harm, pursue, hunt, shoot, wound, kill, trap, capture, restrain, or tag any native mammal or native bird, or to attempt to engage in such conduct.

"Treaty" means the Antarctic Treaty signed in Washington, D.C., on December 1, 1959.

"United States" means the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Terrritory of the Pacific Islands, including the Government of the Northern Mariana Islands.

"United States citizen" means any individual who is a citizen or national of the United States; any corporation, partnership, trust, association, or other legal entity existing or organized under the laws of any of the United States; any department, agency, or other instrumentality of the Federal Government or of any State; and any officer, employee, or agent of any such entity or instrumentality.

## Subpart B—Prohibited Acts, Exceptions

### § 670.4 Prohibited acts.

Unless a permit has been issued pursuant to Subpart C of this part or unless one of the exceptions stated in §§ 670.5 through 670.8 is applicable, it is unlawful to commit, attempt to commit, or cause to be committed any of the acts described in paragraphs (a) through (h) of this section.

(a) *Taking any native mammal or native bird.* It is unlawful for any United States citizen to take within Antarctica any native mammal or native bird.

(b) *Collecting native plants.* It is unlawful for any United States citizen to collect a native plant in a specially protected area.

(c) *Entry into designated area.* It is unlawful for any United States citizen to enter any specially protected area or to enter certain sites of special scientific interest.

(d) *Possession and transfer of native mammals, plants or birds.* It is unlawful for any United States citizen wherever located or any foreign person while within the United States to possess, sell, offer for sale, deliver, receive, carry, transport, or ship by any means whatever any native plant collected in a specially protected area, or any native mammal or native bird taken in Antarctica.

(e) *Import into or export from the United States.* It is unlawful for any United States citizen wherever located or any foreign person while within the United States to import into the United States or export from the United States any native mammal or native bird or any native plant collected in a specially protected area.

(f) *Introduction of non-indigenous animals and plants into Antarctica.* It is unlawful for any United States citizen to introduce into Antarctica any animal or plant that is not indigenous to Antarctica as specified in Subpart J of this part, except as provided in § 670.7 and 670.8.

(g) *Violation of regulations.* It is unlawful for any United States citizen wherever located or any foreign person while within the United States to violate the regulations set forth in this Part.

(h) *Violation of permit conditions.* It is unlawful for any permit holder, whether or not a United States citizen, to violate any term or condition of any permit issued under Subpart C of this Part.

### § 670.5 Exceptions in extraordinary circumstances.

(a) *Human life.* No act described in § 670.4 shall be unlawful if committed under emergency circumstances to prevent the loss of human life.

(b) *Aiding or salvaging native mammals or native birds.* The prohibition on taking shall not apply to taking native mammals or native birds if such action is necessary to:

(1) Aid a sick, injured, or orphaned specimen;

(2) Dispose of a dead specimen; or

(3) Salvage a dead specimen which may be useful for scientific study.

(c) *Reporting.* Any actions taken under the exceptions in this section shall be reported promptly to the Director.

### § 670.6 Prior possession exception.

(a) *Exception.* Section 670.4 shall not apply to (1) any native mammal, bird or plant which is held in captivity on or before October 28, 1978, or (2) any offspring of any such mammal, bird, or plant.

(b) *Presumption.* With respect to any prohibited act set forth in § 670.4 which occurs after April 29, 1979, the Act creates a rebuttable presumption that the native mammal, native bird, or native plant involved in such act was not held in captivity on or before October 28, 1978, or was not an offspring referred to in paragraph (a) of this section.

### § 670.7 Food exception.

Paragraph (f) of § 670.4 shall not apply to the introduction of animals and plants into Antarctica for use as food so long as animals and plants used for this purpose are kept under controlled conditions. This exception shall not apply to living non-indigenous species of birds.

### § 670.8 Foreign permit exceptions.

Paragraphs (d) and (f) of § 670.4 shall not apply to transporting, carrying, receiving, or possessing native mammals, native plants, or native birds or to the introduction into Antarctica of non-indigenous animals and plants when conducted by an agency of the U.S. Government on behalf of a foreign national operating under a permit issued by a foreign government to give effect to the Agreed Measures.

## Subpart C—Permits

### § 670.9 Applications for permits.

(a) *General content of permit applications.* All applications for a permit shall be dated and signed by the applicant and shall contain the following information:

(1) The name and address of the applicant;

(i) Where the applicant is an individual, the business or institutional affiliation the applicant; and

(ii) Where the applicant is a corporation, firm, partnership, institution, or agency, either private or public, the name and address of its president or principal officer.

(2) The scientific names and the numbers of native plants to be collected in a specially protected area; or the scientific names and the numbers of native mammals or native birds to be taken;

(3) A description of the native mammals, native birds, or native plants to be taken or collected, including as appropriate the age, size, sex, and condition, e.g., whether pregnant or nursing;

(4) A complete description of the location, time period, and manner of taking or collecting, including the proposed access to the location;

(5) Whether the native mammals, birds, or plants, or parts of them are to be imported into the United States, and if so, their ultimate disposition;

(6) Where the application is for the introduction of non-indigenous plants and animals, the scientific name and the number to be introduced;

(7) Whether agents as referred to in § 670.12 will be used; and

(8) The desired effective date of the permit.

(b) *Content of specific permit applications.* In addition to the general information required for permit applications set forth in this subpart, the applicant must submit additional information relating to the specific action for which the permit is being sought. These additional requirements are set forth in the sections of this part dealing with the subject matter of the permit applications as follows:

Native Mammals and Native Birds—§ 670.16.
Specially Protected Species—§ 670.21.
Native Plants—§ 670.25.
Specially Protected Areas—§ 670.29.
Sites of Special Scientific Interest—§ 670.33.
Import into or Export from the U.S.—§ 670.38.
Introduction on Non-Indigenous Plants and Animals—§ 670.42.

(c) *Certification.* Applications for permits shall include the following certification:

I certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. Any false statement will subject me to the criminal penalties of 18 U.S.C. 1001.

(d) *Address to which applications should be sent.* Each application shall be in writing, addressed to:

Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550.

(e) *Sufficiency of application.* The sufficiency of the application shall be determined by the Director. The Director may waive any requirement for information, or require such additional information as determined to be

relevant to the processing of the application.

(f) *Withdrawal.* An applicant may withdraw the application at any time.

(g) *Publication of permit applications.* The Director shall publish notice in the **Federal Register** of each application for a permit. The notice shall invite the submission by interested parties, within 30 days after the date of publication of the notice, of written data, comments, or views with respect to the application. Information received by the Director as a part of any application shall be available to the public as a matter of public record.

**§ 670.10 General issuance criteria.**

Upon receipt of a complete and properly-executed application for a permit and the expiration of the applicable public comment period, the Director will decide whether to issue the permit. In making this decision, the Director will consider, in addition to the specific criteria set forth in the appropriate subparts of this part:

(a) Whether the authorization requested meets the objectives of the Act and the requirements of these regulations;

(b) The judgment of persons having expertise in matters germane to the application; and

(c) Whether the applicant has failed to disclose material information required or has made false statements about any material fact in connection with his application.

**§ 670.11 Permit administration.**

(a) *Issuance of permits.* The Director may approve an application in whole or in part. Permits shall be issued in writing and be signed by the Director. Each permit may contain such terms and conditions as are consistent with the Act and this part.

(b) *Denial.* The applicant shall be notified in writing of the denial of any permit request or part of a request, and the reason for such denial. If authorized in the notice of denial, the applicant may submit further information, or reasons why the permit should not be denied. Such further submissions shall not be considered a new application.

(c) *Amendment of applications or permits.* An applicant or permit holder desiring to have any term or condition of his application or permit modified must submit full justification and supporting information in conformance with the provisions of this subpart and the subpart governing the activities sought to be carried out under the modified permit. Any application for modification of a permit that involves a material change beyond the terms originally requested will normally be subject to the same procedures as a new application.

(d) *Notice of issuance or denial.* Within 10 days after the date of the issuance or denial of a permit, the Director shall publish notice of the issuance or denial in the **Federal Register.**

(e) *Agents of the permit holder.* The Director may authorize the permit holder to designate agents to act on behalf of the permit holder.

(f) *Marine mammals, endangered species and migratory birds.* If the Director receives a permit application involving any native mammal which is a marine mammal as defined by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(5)), any species which is an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or any native bird which is protected under the Migratory Bird Treaty Act (16 U.S.C. 701 et seq.), the Director shall submit a copy of the application to the Secretary of Commerce or to the Secretary of the Interior, as appropriate. If the appropriate Secretary determines that a permit should not be issued pursuant to any of the cited acts, the Director shall not issue a permit. The Director shall inform the applicant of any denial by the appropriate secretary and no further action will be taken on the application. If, however, the appropriate Secretary issues a permit pursuant to the requirements of the cited acts, the Director still must determine whether the proposed action is consistent with the Act and these regulations.

**§ 670.12 Conditions of permits.**

(a) *Possession of permits.* Permits issued under these regulations, or copies of them, must be in the possession of persons to whom they are issued and their agents when conducting the authorized action.

(b) *Display of permits.* Any permit issued shall be displayed for inspection upon request to the Director, designated agents of the Director, or any person with enforcement responsibilities.

(c) *Filing of reports.* Permit holders may be required to file reports of the activities conducted under a permit. Reports shall be submitted to the Director not later than June 30 for the preceding 12 months.

**§ 670.13 Modification, suspension, and revocation.**

(a) The Director may modify, suspend, or revoke, in whole or in part, any permit issued under this section:

(1) In order to make the permit consistent with any change to any regulation in this part made after the date of issuance of the permit;

(2) If there is any change in conditions which makes the permit inconsistent with the purpose of the Act and these regulations; or

(3) In any case in which there has been any violation of any term or condition of the permit, any regulation in this part, or any provision of the Act.

(b) Whenever the Director proposes any modifications, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Director with respect to such proposed modification, suspension, or revocation. If a hearing is requested, the action proposed by the Director shall not take effect before a decision is issued by him after the hearing, unless the proposed action is taken by the Director to meet an emergency situation.

(c) Notice of the modification, suspension, or revocation of any permit by the Director shall be published in the **Federal Register** within 10 days from the date of the Director's decision.

**§ 670.14 [Reserved]**

## Subpart D—Native Mammals and Native Birds

**§ 670.15 Specific issuance criteria.**

With the exception of specially protected species of mammals and birds designated in Subpart E of this part, permits to take a mammal or bird in Antarctica designated as a native mammal in § 670.17 or as a native bird in § 670.18 may be issued:

(a) Only for the purpose of providing.—(1) Specimens for scientific study or scientific information, or

(2) Specimens for museums, zoological gardens, or other educational or cultural institutions or uses;

(b) Shall ensure, as far as possible, that.—(1) No more native mammals or native birds are taken in any year than can normally be replaced by natural reproduction in the following breeding season, and

(2) The variety of species and the balance of the natural ecological systems within Antarctica are maintained; and

(3) The authorized taking, transporting, carrying, or shipping of any native mammal or native bird is carried out in a humane manner.

**§ 670.16 Contents of permit applications.**

In addition to the information required in Subpart C of this part, an applicant

seeking a permit to take a native mammal or native bird shall include a complete description of the project including the purpose of the proposed taking, the use to be made of the native mammals or native birds, and the ultimate disposition of the native mammals or native birds. Sufficient information must be provided to establish that the taking, transporting, carrying, or shipping will be humane.

**§ 670.17 Designation of native mammals.**

The following are designated native mammals:

Dolphin:
Hourglass—Lagenorhynchus cruciger.
Seal:
Crabeater—Lobodon carcinophagus.
Elephant—Mirounga leonina.
Kerguelen Fur—Arctocephalus gazella.*
Leopard—Hydrurga leptonyx.
Ross—Ommatophoca rossi.*
Weddell—Leptonychotes weddelli.
Whale:
Arnoux's Beaked—Berardius arnuxii.
Killer—Orcinus orca.
Long-finned Pilot—Globicephala melaena.
Southern Bottlenose—Hyperoodon planifrons.

*These species of mammals have been designated as specially protected species and are subject to Subpart E of this part.

**§ 670.18 Designation of native birds.**

The following are designated native birds:

Albatross:
Black-browed—Diomedea melanophris.
Gray-headed—Diomedea chrysostoma.
Light-mantled Sooty—Phoebetria palpebrata.
Wandering—Diomedea exulans.
Fulmer:
Northern Giant—Macronectes halli.
Southern—Fulmarus glacialoides.
Southern Giant—Macronectes giganteus.
Gull:
Southern Black-backed—Larus dominicanus.
Jaeger:
Parasitic—Stercorarius parasiticus.
Pomarine—Stercorarius pomarinus.
Penguin:
Adelie—Pygoscelis adeliae.
Chinstrap—Pygoscelis antarctica.
Emperor—Aptenodytes forsteri.
Gentoo—Pygoscelis papua.
King—Aptenodytes patagonicus.
Macaroni—Eudyptes chrysolophus.
Rockhopper—Eudyptes crestatus.
Petrel:
Antarctic—Thalassoica antarctica.
Black-bellied Storm—Fregetta tropica.
Blue—Halobaena caerulea.
Gray—Procellaria cinerea.
Great-winged—Pterodroma macroptera.
Kerguelen—Pterodroma brevirostris.
Mottled—Pterodroma inexpectata.
Snow—Pagodroma nivea.
Soft-plumaged—Pterodroma mollis.
South-Georgia Diving—Pelecanoides georgicus.
White-bellied Storm—Fregetta grallaria.
White-chinned—Procellaria aequinoctialis.
White-headed—Pterodroma lessoni.
Wilson's Storm—Oceanites oceanicus.
Pigeon:
Cape—Daption capense.
Pintail:
South American Yellow-billed—Anas georgica spinicauda.
Prion:
Antarctic—Pachyptila desolata.
Narrow-billed—Pachyptila belcheri.
Shag:
Blue-eyed—Phalacrocorax atriceps.
Shearwater:
Sooty—Puffinus griseus.
Skua:
Brown—Catharacta lonnbergi.
South Polar—Catharacta maccormicki.
Swallow:
Barn—Hirundo rustica.
Sheathbill:
American—Chionis alba.
Tern:
Antarctic—Sterna vittata.
Arctic—Sterna paradisaea.

**§ 670.19 [Reserved]**

## Subpart E—Specially Protected Species of Mammals and Birds

**§ 670.20 Specific issuance criteria.**

Permits authorizing the taking of mammals or birds designated as a specially protected species of mammals and birds in § 670.22 may only be issued if

(a) There is a compelling scientific purpose for such taking;

(b) The actions allowed under any such permit will not jeopardize the existing natural ecological system, or the survival of that species; and

(c) The authorized taking, transporting, carrying, or shipping of any native mammal or native bird is carried out in a humane manner.

**§ 670.21 Content of permit applications.**

In addition to the information required in Subpart C of this part, an applicant seeking a permit to take a specially protected species shall include the following in the application:

(a) A detailed scientific justification of the need for taking the specially protected species, including a discussion of possible alternative species;

(b) Information demonstrating that the proposed action will not jeopardize the existing natural ecological system or the survival of that species; and

(c) Information establishing that the taking, transplanting, carrying, or shipping of any native mammal or native bird is carried out in a humane manner.

**§ 670.22 Designation of specially protected species of mammals and birds.**

The Act states that the Director shall designate as a specially protected species any native species of mammal or bird which is approved by the United States for special protection under the Agreed Measures. The following two species have been so approved and are hereby designated specially protected species:

*Common Name and Scientific Name*

Kerguelen Fur Seal—Arctocephalus tropicales gazella.
Ross Seal—Ommatophoca rossi.

**§ 670.23 [Reserved]**

## Subpart F—Native Plants

**§ 670.24 Specific issuance criteria.**

Permits authorizing the collection of any native plant designated in § 670.26 from a specially protected area designated in § 670.30 may be issued only if

(a) There is a compelling scientific purpose for such collection which cannot be served elsewhere, and

(b) The actions allowed under any such permit will not jeopardize the natural ecological system existing in that area.

**§ 670.25 Content of permit applications.**

In addition to the information required in Subpart C of this part, an applicant seeking a permit to collect a native plant in a specially protected area shall include the following in the application:

(a) A detailed scientific justification of the need for the collection, including a discussion of alternatives; and

(b) Information demonstrating that the proposed action will not jeopardize the unique natural ecological system existing in that area.

**§ 670.26 Designation of native plants.**

All plants found in Antarctica are designated native plants, including.

Fungi—Lichens.
Vascular Plants—Marine algae.
Bryophytes—Freshwater algae.

**§ 670.27 [Reserved]**

## Subpart G—Specially Protected Areas

**§ 670.28 Specific issuance criteria.**

Permits authorizing entry into any specially protected area designated in § 670.30 of this title may be issued only if

(a) There is a compelling scientific purpose for such entry which cannot be served elsewhere, and

(b) The actions allowed under any such permit will not jeopardize the

natural ecological system existing in that area.

No permit shall be issued that allows the operation of any surface vehicle in a specially protected area.

**§ 670.29 Content of permit applications.**

In addition to the information required in Subpart C of this part, and applicant seeking a permit to enter a specially protected area shall include the following in the application.

(a) A detailed scientific justification of the need for such entry, including a discussion of alternatives; and

(b) Information demonstrating that the proposed action will not jeopardize the unique natural ecological system existing in that area.

**§ 670.30 Designation of specially protected areas.**

The Act states the Director shall designate as a specially protected area, each area identified under the Agreed Measures as needing special protection. The following areas have been so identified and are designated as specially protected areas:

(a) Taylor Rookery, MacRobertson Land situated at Latitude 67° 26′ South, Longitude 60° 50′ East.

(b) Rookery Islands in Holme Bay.

(c) Ardery Island and Odbert Island in Vincennes Bay.

(d) Sabrina Island and Balleny Islands in the Ross Sea

(e) Beaufort Island in the Ross Sea.

(f) Cape Hallett in Victoria Land.

(g) Dion Islands in Marguerite Bay.

(h) Green Island in the Berthelot Islands.

(i) Cape Shirreff on Livingston Island.

(j) Moe Island in the South Orkney Islands.

(k) Lynch Island in the South Orkney Islands.

(l) Powell Island (southern portion only), Fredriksen Island, Michelsen Island, Christofferson Island, Grey Island and all unnamed islands within one mile of these islands; all of which are part of the South Orkney Islands.

(m) Coppermine Peninsula on Robert Island.

(n) Litchfield Island in the Palmer Archipelago.

Maps specifying these areas in greater detail may be obtained from the Director.

**§ 670.31 [Reserved]**

## Subpart H—Sites of Special Scientific Interest

**§ 670.32 Specific issuance criteria.**

Sites of Special Scientific Interest, designated in § 670.34, are sites where scientific investigations are being conducted or are planned and there is a demonstrable risk of interference which would jeopardize those investigations. Certain of these sites do not require limitations on entry to protect their value for scientific investigations. No permit is required for entry into these sites but entrants must comply with the managment plan. Permits to enter sites for which an entry permit is required may be issued only if the proposed entry is consistent with the management plan:

**§ 670.33 Content of permit applications.**

In addition to the information required in Subpart C of this part, an applicant seeking a permit to enter a site of special scientific interest shall include the following in the application:

(a) The justification for such entry;

(b) Information demonstrating that the proposed action will not jeopardize the unique scientific value of the area; and

(c) A statement demonstrating the consistency of the proposed action with the management plan.

**§ 670.34 Designation of sites of special scientific interest and management plans for those sites.**

The Act states that the Director shall designate as a site of special scientific interest each area approved by the United States in accordance with Recommendation VIII–3 of the Eighth Antarctic Treaty Consultative Meeting. The Act also requires the Director to prescribe a management plan for such sites which is consistent with any management plan approved by the United States in accordance with that Recommendation. Accordingly, the following areas are designated as sites of special scientific interest to be managed in accordance with the management plan set forth after each designation:

(a) *Sites of Special Scientific Interest Requiring a Permit for Entry.*—(1)(i) Cape Royds on Ross Island, (ii) Cape Crozier on Ross Island, and (iii) Haswell Island Management Plan. Entry by foot only for scientific purposes will be authorized. Pedestrians may not move through areas populated by birds except as necessary in the course of scientific investigations. A compelling scientific purpose must be demonstrated before a permit will be issued to take a native bird from this Site.

(2) Fildes Peninsula on King George Island Managment Plan. The operation of surface vehicles and the landing of helicopters are not permitted within the Site except in an emergency. No buildings or other facilities may be erected on this Site. No rock samples may be obtained unless authorized in the entry permit. Such authorization shall be given only for compelling scientific purposes.

(3) Byers Peninsula on Livingston Island Managment Plan. The operation of surface vehicles is not permitted within the Site except in an emergency. No buildings or other facilities may be erected on this Site. No rock samples may be obtained unless authorized in the entry permit. Such authorization shall be given only for compelling scientific purposes.

(4) Barwick Valley in Victoria Land Management Plan. Entry on foot only will be authorized. Overflight is not permitted. Permanent field camps, landfill disposal, and other activities which would introduce new materials or organisms, including microorganisms, into the Site are not permitted. All materials carried into the Site shall be removed.

(b) *Sites of Special Scientific Interest not Requiring a Permit for Entry.*—(1) Arrival Heights on Ross Island Management Plan. Vehicles and pedestrians shall keep to designated tracks. No radio frequency transmitting equipment other than low power transceivers for local essential communication may be installed within the Site.

(c) *Maps.*—Maps identifying the designated Sites of Special Scientific Interest in greater detail are available from the Director.

**§ 670.35 [Reserved]**

## Subpart I—Import Into and Export From the United States

**§ 670.36 Specific issuance criteria for imports.**

Subject to compliance with other applicable law, any person who takes a native mammal or native bird or collects a native plant under a permit issued under these regulations may import it into the United States unless the Director finds that importation would not further the purpose for which it was taken or collected. If the importation is for a purpose other than that for which the native mammal or native bird was taken or the native plant collected, the Director may permit importation upon a finding that importation would be consistent with the purposes of the Act, these regulations, or the permit under which they were taken or collected.

**§ 670.37 Specific issuance criteria for exports.**

The Director may permit export from the United States of any native plant taken from a specially protected area or

of any native mammal or native bird upon a finding that exportation would be consistent with the purposes of the Act, these regulations, or the permit under which they were taken or collected.

**§ 670.38 Contents of permit applications.**

In addition to the information required in Subpart C of this part, an applicant seeking a permit to import into or export from the United States a native plant taken from a specially protected area, a native mammal, or a native bird shall include the following in the application:

(a) Information demonstrating that the import or export would further the purposes for which the species was taken or collected; or

(b) Information demonstrating that the import or export is consistent with the purposes of the Act or these regulations; and

(c) A statement as to which U.S. port will be used for the import or export.

The application shall also include information describing the intended ultimate disposition of the imported or exported item.

**§ 670.39 Entry and exit ports.**

Any native plant collected in a specially protected area and any native mammal or native bird imported into or exported from the United States must enter or leave the United States at ports designated by the Secretary of Interior in 50 CFR Part 14. The ports presently designated are:

(a) New York, New York,
(b) Miami, Florida,
(c) Chicago, Illinois,
(d) San Francisco, California,
(e) New Orleans, Louisiana,
(f) Seattle, Washington,
(g) Honolulu, Hawaii.

Permits to import or export at non-designated ports may be sought from the Secretary of Interior pursuant to Subpart C, 50 CFR Part 14.

**§ 670.40 [Reserved]**

## Subpart J—Introduction of Non-indigenous Plants and Animals

**§ 670.41 Specific issuance criteria.**

For purposes consistent with the Act, only the following plants and animals may be considered for a permit allowing their introduction into Antarctica:

(a) sledge dogs;
(b) domestic animals and plants; and
(c) laboratory animals and plants including viruses, bacteria, yeasts, and fungi.

Living non-indigenous species of birds shall not be introduced into Antarctica.

**§ 670.42 Content of permit applications.**

Applications for the importation of plants and animals into Antarctica must describe (a) the need for the plants or animals, (b) how the applicant will ensure that the plants or animals will not harmfully interfere with the natural system, and (c) how the plants or animals will be removed from Antarctica or destroyed after they have served their purpose.

**§ 670.43 Conditions of permits.**

(a) *General.* All permits allowing the introduction of non-indigenous plants and animals will require that the animal or plant be kept under controlled conditions to prevent harmful interference with the natural system and that after serving its purpose the plant or animal shall be removed from Antarctica or destroyed in a manner that protects the natural system of Antarctica.

(b) *Dogs.* In addition to the requirements of paragraph (a) of this section, all dogs imported into Antarctica shall be inoculated against the following diseases:

(1) Distemper;
(2) Contagious canine hepatitis;
(3) Rabies; and
(4) Leptospirosis (L. canicola and L. icterohaemorragicae).

Each dog shall be inoculated at least two months before importation, and a certificate of inoculation shall accompany each dog. No dog shall be allowed to run free in Antarctica.

**§ 670.44 [Reserved]**

Signed at Washington, D.C., on May 31, 1979:

**Richard C. Atkinson,**

*Director.*

[FR Doc. 79-11649 Filed 6-6-79; 8:45 am]

BILLING CODE 7555-01-M

## DEPARTMENT OF TRANSPORTATION

### Urban Mass Transportation Administration

### 49 CFR Part 601

### Organization, Function, and Procedures

**AGENCY:** Urban Mass Transportation Administration, DOT.

**ACTION:** Final Rule.

**SUMMARY:** The purpose of this document is to revise the sequence in which UMTA officials assume and perform the duties of the Administrator when he or she is absent or disabled (line of succession). Under this regulation, when the Administrator and Deputy Administrator are absent or disabled, the duties of the Administrator will be performed by the Associate Administrator for Policy, Budget and Program Development. If this official is also absent or disabled, the duties of the Administrator will be performed by the Associate Administrator for Planning, Management and Demonstrations. The remainder of the line of succession regulation remains unchanged, except that the Associate Administrator for Transportation Planning position is deleted since this position no longer exists.

**EFFECTIVE DATE:** May 29, 1979.

**FOR FURTHER INFORMATION CONTACT:** Joseph Marshall, Acting Director, Office of Public Affairs, Urban Mass Transportation Administration, Room 9330, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-4043.

**SUPPLEMENTARY INFORMATION:** Since this is a matter relating to agency management, under 5 U.S.C. 553, notice and comment are not required, and the rule may be made effective less than 30 days after publication.

Accordingly, Part 601 of Title 49 of the Code of Federal Regulations is amended by revising § 601.4(b) and (c) to read as follows, and by deleting § 601.4(g).

**§ 601.4 Responsibilities of the Administrator.**

* * * * *

(b) Associate Administrator for Policy, Budget and Program Development.

(c) Associate Administrator for Planning, Management and Demonstrations.

* * * * *

(49 CFR 1.51)

Dated: May 29, 1979.

**Gary D. Gayton,**

*Acting Administrator.*

[FR Doc. 79-17686 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-57-M

# Proposed Rules

Federal Register
Vol. 44, No. 111
Thursday, June 7, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### [7 CFR Part 907]

### Navel Oranges Grown in Arizona and Designated Part of California; Proposed Amendment of Rules and Regulations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The proposed action would establish a separate district for that part of the production area north of the 38th Parallel. The proposal is designed to recognize differences in keeping quality of navel oranges produced in the proposed district for purpose of regulation under the marketing order.

**DATE:** Comments must be received on August 6, 1979.

**ADDRESS:** Comments should be filed in duplicate with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

**FOR FURTHER INFORMATION CONTACT:** Malvin E. McGaha, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, telephone (202) 447–5975.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Department is considering proposed amendment, as hereinafter set forth, of the rules and regulations (Subpart—Rules and Regulations; 7 CFR 907.100 *et seq.*) currently in effect pursuant to the applicable provisions of the amended marketing agreement and Order No. 907, as amended (7 CFR Part 907). The order regulates the handling of navel oranges grown in Arizona and designated part of California. This is a regulatory program effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The proposal to amend said rules and regulations was recommended by the Navel Orange Administrative Committee established under the order as the agency to administer the terms and provisions thereof.

At a meeting held on April 24, 1979, the Navel Orange Administrative Committee recommended pursuant to § 907.66(d) of the order that a separate prorate district be established for that part of the production area north of the 38th Parallel. The committee determined that such action is necessary and appropriate to give recognition of the fact that there are general differences in keeping quality of navel oranges produced in the proposed district compared to such oranges produced in other parts of the production area. Under the order the production area is divided into three districts for the purpose of regulation with a provision that the committee may, with the approval of the Secretary, establish a separate district for that part of the production area north of the 38th Parallel. Such proposed district would be designated as District 4. The proposed action recognizes that oranges produced in the proposed district do not have the keeping quality of fruit produced in some other areas. The order prorates the weekly volume of shipments allocated to a district among handlers in the district separately from handlers in other districts. The proposal is designed to allow growers and handlers in the proposed district to develop a shipping schedule tailored to their particular harvesting and marketing situation and thereby add flexibility to their handling operations. Presently, the part of the production area north of the 38th Parallel is included in District 1 which is defined to mean that part of the State of California which is south of a line drawn due east and west through the present post office in Red Bluff, California, and north of a line drawn due east and west through the present post office in Gorman, California, and west of the extension of a line drawn due north and south through the present post office in White Water, California, but excluding San Luis Obispo and Santa Barbara Counties. Under the proposal the boundaries of District 1 would be defined to mean that part of the State of California which is south of the 38th Parallel and north of a line drawn due east and west through the present post office in Gorman, California, and west of the extension of a line drawn due north and south through the present post office in White Water, California, but excluding San Luis Obispo and Santa Barbara Counties. As proposed, a new District 4 would encompass that area north of the 38th Parallel and south of a line drawen due east and west through the present post office in Red Bluff, California.

The proposal is to add a new section reading as follows:

**§ 907.166 Change in definition of district 1 and establishment of a new district 4.**

(a) District 1 shall include that part of the State of California which is south of the 38th Parallel and north of a line drawn due east and west through the present post office in Gorma, California, and west of the extension of a line drawn due north and south through the present post office in White Water, California, but excluding San Luis Obispo and Santa Barbara Counties.

(b) District 4 shall include that part of the State of California which is north of the 38th Parallel and south of a line drawn due east and west through the present post office in Red Bluff, California.

Dated: June 4, 1979.

D. S. Kuryloski,

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

[FR Doc. 79–17711 Filed 6–6–79; 8:45 am]

BILLING CODE 3410–02–M

### [7 CFR Part 948]

### Irish Potatoes Grown in Colorado—Area No. 3; Proposed Handling Regulation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed regulation would require fresh market shipments of potatoes grown in Colorado—Area No. 3 to be inspected and meet minimum grade, size and maturity requirements. The regulation should promote orderly marketing of such potatoes and keep less desirable qualities and sizes from being shipped to consumers.

**DATE:** Comments due July 5, 1979.

**ADDRESSES:** Comments should be sent to: Hearing Clerk, Room 1077 South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Donald S. Kuryloski, Acting Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 447-6393.

**SUPPLEMENTARY INFORMATION:** Marketing Agreement No. 97 and Order No. 948, both as amended, regulate the handling of potatoes grown in designated counties of Colorado Area No. 3. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The Colorado Area No. 3 Potato Committee, established under the order, is responsible for its local administration.

This notice is based upon recommendations made by the committee at its public meeting in Greeley, Colorado, on May 16, 1979.

The grade, size, maturity and inspection requirements recommended herein are similar to those which have been issued during past seasons. They are necessary to prevent potatoes of poor quality or undesirable sizes from being distributed to fresh market outlets. The specific proposals, hereinafter set forth, would benefit consumers and producers by standardizing and improving the quality of the potatoes shipped from the production area.

Exceptions would be provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable.

Shipments would be permitted to certain special purpose outlets without regard to the grade, size, maturity and inspection requirements, provided that safeguards were met to prevent such potatoes from reaching unauthorized outlets. Certified seed would be exempt because requirements for this outlet differ greatly from those for fresh market. Shipments for use as livestock feed would likewise be exempt. Since no purpose would be served by regulating potatoes used for charity purposes, such shipments would be exempt. Also potatoes for most processing uses are exempt under the legislative authority for this part.

Potatoes for prepeeling would be handled without regard to maturity requirements since skinning of such potatoes would be of no consequence. Also, the maturity requirements terminate on December 31 because at that stage of the marketing season potatoes are generally mature with skins firmly set.

In order to maximize the benefits of orderly marketing the proposed regulation should become effective on July 16, when the marketing season is expected to begin. Interested persons were given an opportunity to comment on the proposal at an open public meeting held at Greeley, Colorado, on May 16, where it was unanimously recommended by the committee. This proposal is similar to regulations in effect for past seasons. It is hereby determined that the thirty days allowed for comments should be sufficient under these circumstances and will effectuate the declared policy of the act.

The proposal is as follows:

**§ 948.381 Handling regulation.**

During the period July 16, 1979, through June 30, 1980, no person shall handle any lot of potatoes grown in Area No. 3 unless such potatoes meet the requirements of paragraphs (a), (b) and (c) of this section, or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section.

(a) *Grade and size requirements—All varieties.* U.S. No. 2 or better grade, 1⅞ inches minimum diameter or 4 ounces minimum weight. However, Size B may be handled if U.S. No. 1 grade.

(b) *Maturity (skinning) requirements—All varieties.* Through December 31, 1979, for U.S. No. 2 grade, not more than "moderately skinned," and for all other grades, not more than "sliightly skinned;" thereafter no maturity requirements.

(c) *Inspection.* (1) No handler shall handle any potatoes for which inspection is required unless an appropriate inspection certificate has been issued with respect thereto and the certificate is valid at the time of shipment. For purpose of operation under this part it is hereby determined pursuant to paragraph (d) of § 948.40, that each inspection certificate shall be valid for a period not to exceed five days following the date of inspection as shown on the inspection certificate.

(2) No handler may transport or cause the transportation by motor vehicle of any shipment of potatoes for which an inspection certificate is required unless each shipment is accompanied by a copy of the inspection certificate applicable thereto and the copy is made available for examination at any time upon request.

(d) *Special purpose shipments.* (1) The grade, size, maturity and inspection requirements of paragraphs (a), (b), and (c) of this section shall not be applicable to shipments of potatoes for:

(i) Livestock feed;

(ii) Charity;

(iii) Canning, freezing, and "other processing" as hereinafter defined; and

(iv) Certified seed potatoes (§ 948.6).

(2) The maturity requirements set forth in paragraph (b) of this section shall not be applicable to shipments of potatoes for prepeeling.

(e) *Safeguards.* Each handler making shipments of potatoes pursuant to paragraph (d) of this section shall:

(1) Prior to shipment, apply for and obtain a Certificate of Privilege from the committee;

(2) Furnish the committee such reports and documents as required, including certification by the buyer or receiver on the use of such potatoes; and

(3) Bill each shipment directly to the applicable buyer or receiver.

(f) *Minimum quantity.* For purposes of regulation under this part, each person may handle up to but not to exceed 1,000 pounds of potatoes per shipment without regard to the requirements of paragraphs (a) and (b) of this section, but this exception shall not apply to any shipment of over 1,000 pounds of potatoes.

(g) *Definitions.* The terms "U.S. No. 1," "U.S. No. 2," "Size B," "moderately skinned" and "slightly skinned" shall have the same meaning as when used in the United States Standards for Grades of Potatoes (7 CFR 2851.1540—2851.1566) including the tolerances set forth therein. The term "prepeeling" means the commercial preparation in a prepeeling plant of clean, sound, fresh potatoes by washing, peeling or otherwise removing the outer skin, trimming, sorting, and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 2852.2422 United States Standards for Grades of Peeled Potatoes (7 CFR 2852.2421—2852.2433). The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation

does not constitute "other processing." All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 97, as amended, and this part.

(h) *Applicability to imports.* Pursuant to Section 8e of the act and § 980.1, "Import regulations" (7 CFR 980.1), round white varieties of Irish potatoes, except certified seed potatoes, imported into the United States during the period August 1, 1979, through June 4, 1980, shall meet the minimum grade, size, quality, and maturity requirements specified in paragraphs (a) and (b) of the section.

Dated: June 4, 1979.

Note.—This proposed regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

D. S. Kuryloski,

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

[FR Doc. 79-17712 Filed 6-6-79; 8:45 am]

BILLING CODE 3410-02-M

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[7 CFR Part 1099]

[Docket No. AO-183-A36]

## Milk in the Paducah, Ky., Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Public hearing on proposed rules.

**SUMMARY:** The hearing is being held at the request of Dairymen, Inc. (DI), a cooperative that represents most of the dairy farmers that supply milk for the market. DI's proposal would allow greater diversions of producer milk to nonpool plants. The cooperative claims that its proposed changes would reduce marketing costs and are necessary to reflect current marketing conditions.

**DATE:** June 22, 1979.

**ADDRESS:** Holiday Inn, 727 Joe Clifton Drive, Paducah, Kentucky 42001.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4829.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of a public hearing to be held at the Holiday Inn, 727 Joe Clifton Drive, Paducah, Kentucky, beginning at 9:00 a.m., on June 22, 1979, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Paducah, Kentucky, marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

**Proposed By dairymen, Inc.**

*Proposal No. 1*

Revise paragraphs (c)(2) and (c)(3) of § 1099.13 *Producer milk* to read as follows:

**§ 1099.13 Producer milk.**

* * * * *

(c) * * *

(2) If diverted by a cooperative association for its account as milk of its members to nonpool plants which does not exceed 33 percent of the milk physically received from member producers of such cooperative association at pool plants during the month in any of the months of April through August and December and 25 percent in other months, except that if milk of members is diverted by the cooperative association in excess of the specified percentages, no milk diverted by the cooperative association during the month shall be producer milk unless the cooperative association designates the dairy farmers whose milk is not producer milk;

(3) If diverted by a handler in his capacity as the operator of a pool plant, as milk of a producer who is not a member of a cooperative association diverting milk pursuant to paragraph (c)(2) of this section, which does not exceed 33 percent of the agrregate quantity of milk received at such plant from such nonmember producers during the month in any of the months of April through August and December and 25 percent in other months, except that if milk of nonmember producers is diverted by the handler in excess of the specified percentages, no milk diverted by the handler during the month shall be producer milk unless the handler designates the dairy farmers whose milk is not producer milk; and

* * * * *

**Proposed by the Dairy Division, Agricultural Marketing Service**

*Proposal No. 2*

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, 2550 Schuetz Road, P.O. Box 1485, Maryland Heights, Missouri 63043, or from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture.
Office of the Administrator, Agricultural Marketing Service.
Office of the General Counsel.
Dairy Division, Agricultural Marketing Service (Washington office only).
Office of the Market Administrator, Paducah, Kentucky, Marketing Area.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on June 4, 1979.

William T. Manley,

*Deputy Administrator, Marketing Program Operations.*

[FR Doc. 79-17710 Filed 6-6-79; 8:45 am]

BILLING CODE 3410-02-M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[14 CFR Chapter I]

[Summary Notice No. PR-79-5]

## Summary of Petitions Received and Dispositions of Petitions Denied

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for rule making and of dispositions of petitions denied.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rule making (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rule making procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Publication of this notice and any information it contains or omits is not intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and be received on or before: August 7, 1979.

**ADDRESSES:** Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Petition Docket No. , 800 Independence Avenue, SW., Washington, D.C. 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-24), Room 916, FAA Headquarters Building (FOB 10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on June 1, 1979.

**Edward P. Faberman,**

*Acting Assistant Chief Counsel, Regulations and Enforcement Division.*

**Petitions for Rulemaking**

| Docket No. | Petitioner | Description of the rule requested |
|---|---|---|
| 19178 | Air Line Pilots Association | DESCRIPTION OF PETITION<br>To amend FAR 121.189 to require that line-up measurement (runway) be taken into account when determining accelerate-stop distances and maximum takeoff weights for large turbine-engine air carrier aircraft. The minimum distance to line-up is that distance from the takeoff threshold required to align the aircraft in takeoff position on the active runway. The maximum takeoff weights and accelerate stop distance would be predicated on the remaining usable runway length.<br>PETITIONER'S REASONS FOR RULE<br>U.S. carriers operating into Australia must comply with these requirements, and if ICAO accepts the requirement as a standard the FAA will have to accept the change or file a Notice of Difference. |
| 18965 | Aircraft Finance Assocation | DESCRIPTION OF PETITION<br>To amend 14 CFR Part 49.35 to reflect an administrative procedural change to require a Seller of an aircraft to provide either Releases or Consents from the holders of liens against the aircraft for which a bill of Sale is submitted.<br>PETITIONER'S REASONS FOR RULE<br>To better protect all persons using the Federal Aircraft Registry. |

**Petitions for Rulemaking: Denied**

None during the period from May 28 through June 1, 1979.

[FR Doc. 79-17673 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-13-M

**[14 CFR Chapter I]**

## Alteration of Philadelphia Terminal Control Center; Meeting

**AGENCY:** Federal Aviation Administration (FAA).

**ACTION:** Notice of Informal Airspace Meeting.

**SUMMARY:** This notice announces an informal airspace meeting to be held on the proposed alteration of the Philadelphia, Pennsylvania Terminal Control Area (TCA) Docket No. 18605-AEA-7-PHL.

**DATE:** June 22, 1979, 7:00 to 10:00 pm.

**ADDRESS:** William J. Green, Federal Building, Rooms 3306 and 3310, 600 Arch St., Philadelphia, Pa. 19106.

**FOR FURTHER INFORMATION:** Mr. Robert J. Beckelman, Chief, Philadelphia International Airport Traffic Control Tower (ATCT), Federal Aviation Administration, Philadelphia, Pennsylvania 19153, telephone number: 215/365-6097. Office hours are 8:00 a.m. to 4:30 p.m. Monday through Friday.

**SUPPLEMENTARY INFORMATION:** This informal airspace meeting is to give interested persons a chance to submit such written data, views, or arguments as they may desire to discuss the proposed alteration of the Philadelphia, Pennsylvania TCA. The information obtained from this informal airspace meeting will be given consideration during the composition of the Notice of Proposed Rule Making (NPRM). All interested individuals and groups are invited to attend, but limited to space available.

Issued on: May 29, 1979.

**Walter H. Mitchell,**

*Chief, Airspace and Procedures Branch.*

[FR Doc. 79-17480 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-13-M

**[14 CFR Part 71]**

**[Airspace Docket No. 79-ASW-13]**

## Proposed Designation of Transition Area: Corning, Ark.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** This notice proposes to designate a transition area at Corning, Ark., to provide controlled airspace for aircraft executing a proposed instrument approach procedure to the Corning Municipal Airport using a proposed approach from the Walnut Ridge VORTAC. Coincident with this action, the airport is changed from visual flight rules (VFR) to Instrument Flight Rules (IFR).

**DATES:** Comments must be received by July 9, 1979.

**ADDRESSES:** Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, Texas.

An informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Manuel R. Hugonnett, Airspace and Procedures Branch (ASW-536), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101; telephone: (817) 624-4911, extension 302.

**SUPPLEMENTARY INFORMATION:** Subpart G 71.181 (44 FR 442) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting IFR activity. Designation of a transition area at Corning, Ark., will necessitate an amendment to this subpart.

**Comments Invited**

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Soutwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101. All communications received on or before July 9, 1979 will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of 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.

**Availability of NPRM**

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101, or by calling (817) 624–4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

**The Proposal**

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a transition area at Corning, Ark. The FAA believes this action will enhance IFR operations at the Corning Municipal Airport by providing controlled airspace for aircraft executing a proposed instrument approach procedure using the Walnut Ridge VORTAC. Subpart G of Part 71 was republished in the **Federal Register** on January 2, 1979 (44 FR 442).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) by adding the Corning, Ark., transition area as follows:

*Corning, Ark.*

That airspace extending upward from 700 feet above the surface within a 5.0 statute mile radius of the Corning Municipal Airport, Corning, Ark., latitude 36°24'14"N., longitude 90°38'58"W.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.) Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Fort Worth, Texas, on May 25, 1979.

**Henry N. Stewart,**

*Acting Director, Southwest Region.*

[FR Doc. 79-17479 Filed 6-6-79; 8:45 am]

**BILLING CODE 4910-13-M**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### [18 CFR Chapter I]

### [Docket No. RM79-19]

### Treatment of Certain Production-Related Costs for Natural Gas To Be Sold and Transported Through the Alaska Natural Gas Transportation System; Notice Inviting Comments

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice Inviting Comments.

**SUMMARY:** Subsequent to the close of the comment period in this docket, the Commission's Alaskan Delegate received an authorized study reviewing Alaska Natural Gas Transportation System issues. In addition, two gas sale and purchase agreements were filed with the Commission subsequent to the close of the comment period. In that these three documents may be relevant to the issues raised in Docket No. RM79–19, the Commission is placing these documents on the public record of this rulemaking and requesting comments on them from parties of record to the rulemaking.

**DATE:** Response to be filed by June 15, 1979.

**ADDRESS:** All responses to reference Docket No. RM79–19, and to be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

All responses to be served on parties of record per addresses supplied on the service list as of May 30, 1979.

**FOR FURTHER INFORMATION CONTACT:** John Adger, Director, Alaska Natural Gas Project Office, Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, D.C. 20426,(202) 275–3827.

**SUPPLEMENTARY INFORMATION:** On February 2, 1979, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking and Statement of Policy respecting the treatment of certain production-related costs for natural gas sold and transported through the Alaska Natural Gas Transportation System (Docket No. RM79–19). Pursuant to a Notice of Extension of Time, issued February 27, 1979, the comment and reply comment period for the proposed rulemaking ended April 2, 1979.

Subsequent to that date, a previously authorized staff study, entitled "A Review of Alaska Natural Gas Transportation System Issues," was submitted to the Commission's Alaskan Delegate. The study discusses issues that may be germane to Docket No. RM79–19.

In addition, on May 25, 1979, pursuant to Section 5.V.2 of the *Decision and Report to Congress on the Alaska Natural Gas Transportation System*, Northern Natural Gas Company (Northern) filed with the Commission a copy of the Gas Sale and Purchase Agreement, Prudhoe Bay Unit, Alaska, between Northern and Exxon Corporation (Exxon). Contemporaneously, pursuant to Section 5.V.2. of the *Decision*, Pacific Gas and

Electric Company (Pacific) filed with the Commission a copy of a Gas Sale and Purchase Agreement, Prudhoe Bay Unit, Alaska, between Pacific and Exxon. These agreements may also be germane to the issues in Docket No. RM79–19.

Accordingly, the Commission is making the study and the gas sale and purchase agreements part of the record in Docket No. RM79–19. In order to ensure that the study and the agreements are made available to all parties, and to give them an opportunity to respond, the Commission is reopening the comment period of Docket No. RM79–19 for the sole purpose of obtaining comments on the study and the agreements. The Commission invites parties of record to submit written data, views, and other information concerning the study and the agreements. An original and 14 copies should be filed by June 15, 1979.

Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should reference Docket No. RM79–19. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, 825 North Capitol Street, N.E., Room 1000, Washington, D.C. during regular business hours.

All comments submitted pursuant to this Notice should be served on all parties on the service list for Docket No. RM79–19.

In consideration of the foregoing, the Commission orders:

(1) The Alaska Gas Project Office will promptly serve on all parties who are on the service list for Docket No. RM79–19 as of May 30, 1979, a copy of this Notice, a copy of the study entitled "A Review of Alaska Gas Transportation System Issues," and copies of the above described gas purchase and sale agreements filed by Northern Natural Gas Company and Pacific Gas and Electric Company.

(2) The comment period for Docket No. RM79–19 is extended to June 15, 1979, for the sole purpose of eliciting data, views, and other written comments on the study and the agreements. Parties of record in Docket No. RM79–19 are invited to file such comments on or before June 15, 1979, with service of copies on all other parties on the service list.

(3) The study and the agreements shall be made a part of the record in Docket No. RM79–19.

By Direction of the Commission.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 79–17646 Filed 6–6–79; 8:45 am]

BILLING CODE 6450–01

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

**[24 CFR Part 811]**

**[Docket No. R–79–673]**

### Use of Federally Guaranteed Mortgage-Backed Securities in Connection with Tax-Exempt Obligations

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Notice of Transmittal of Proposed Rule to Congress under Section 7(o) of the Department of HUD Act.

**SUMMARY:** Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the **Federal Register.** This Notice lists and summarizes for public information a proposed rule which the Secretary is submitting to Congress for such review.

**FOR FURTHER INFORMATION CONTACT:** Burton Bloomberg, Director, Office of Regulations Office of General Counsel, 451 7th Street, S.W., Washington, D.C. 20410 (202) 755–6207.

**SUPPLEMENTARY INFORMATION:** Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

**[24 CFR Part 811]**

### Subpart B—Use of Federally Guaranteed Mortgage-Backed Securities in Connection With Tax-Exempt Obligations

This proposed rule would authorize use of tax-exempt obligations in connection with Government National Mortgage Association mortgage-backed securities for Section 8 multifamily housing projects. The rule prescribes financing arrangements, establishes processing requirements and sets standards for interest rates, fees and charges.

(Sec. 7(o), Department of HUD Act, (42 U.S.C. 3535(o)) sec. 324, Housing and Community Development Amendments of 1978)

Issued at Washington, D.C. June 1, 1979.

**Jay Janis,**

*Under Secretary, Department of Housing and Urban Development.*

[FR Doc. 79–17743 Filed 6–6–79; 8:45 am]

BILLING CODE 4210–01–M

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### Office of the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection

**[24 CFR Part 3280]**

**[Docket No. R–79–672]**

### Revision of Mobile Home Construction and Safety Standards

**AGENCY:** Department of Housing and Urban Development, Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

**ACTION:** Advance Notice of Proposed Rulemaking.

**SUMMARY:** This advance notice requests comments from the public on areas of the Federal Mobile Home Construction and Safety Standards which are being considered for revision prior to publication of the proposed amendments to those standards. The purpose of this notice is to solicit advice and information on: (1) What revisions are needed in major areas of the Federal standards which the Department is presently examining for possible amendments: (2) what other areas of the standards should be considered for amendment; (3) how the standards should be amended to alleviate problems with the above areas of concern. These comments are solicited to assure full public participation prior to the issuance of the proposed rule.

**DATE:** Comments are due on or before August 6, 1979. Comments received after

this date will be considered if time permits.

**ADDRESS:** Comments should be sent to: Rules Docket Clerk, Office of the Secretary, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Mendlen, Director, Standards Division, Office of Mobile Home Standards, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. (202) 426–1872.

**SUPPLEMENTARY INFORMATION:** This notice is being issued to obtain comment on areas of the mobile home construction and safety standards which are bing examined for amendment, what other additional areas need to be considered for revision, and how those areas should be revised. Since publication of the final rule in 1975, the Department has been conducting research studies on various aspects of the standards to determine their adequacy to meet the purposes of the Act. The Department is also considering information previously received from the public, other governmental agencies, and its own experience in enforcing the standards in identifying the areas of the standards it is considering for possible amendment.

The major areas of the standards the Department is considering for revision are listed below. The Department requests comments on the questions cited for each area along with suggested revisions.

**1. Fire Safety**

Are the fire safety provisions adequate to reduce the causes of fire, effectively restrain the spread of fire, and reliably warn occupants of impending fire dangers? Specifically, (a) Are the present interior finish and combustibility requirements providing adequate protection against fire and smoke caused deaths and property damage? (b) Are the locations and sensitivity levels for smoke detectors adequate? (c) Should additional fire warning and protective devices such as gas and heat detectors or fire extinguishers be required? (d) Should alcove furnace installations exposed to the interior living space of the mobile home continue to be permitted without a door to the enclosure? (e) Are there provisions in other sections of the standards which could be revised to reduce the level of fire hazards?

**2. Egress Safety**

Are the location and type of egress facilities adequate to allow occupants time to escape in the event of fire or other types of emergencies? Specifically, (a) Are the present exit path requirements including size and location of interior and exterior doors adequate to facilitate egress? (b) Are the location, operability and size of secondary egress paths, including windows and devices, adequate to facilitate occupant escape? (c) Are the certification and follow-up testing and inspection procedures adequate for egress devices?

**3. Transportation**

Are the transportation system requirements adequate to provide safe highway movement and to limit damage that would affect the long term durability of the structure resulting from road shock and vibration forces? Specifically, (a) What provisions, including design requirements, should be considered to reduce damage to the body, frame and running gear systems that result from the dynamic and shock forces induced by highway movement? (b) What requirements are necessary to regulate re-use of running gear components? (c) Should temporary stiffening devices or other provisions be required to prevent transportation damage to multiple wide mobile homes or mobile homes with large openings? (d) What additional requirements are necessary to assure safe transport during highway movement?

**4. Energy Conservation**

What additional provisions for improving energy conservation should be considered? How should indoor air quality and increased potential for condensation be limited while tightening the structure to improve energy conservation? Specifically, (a) Should the thermal transmission coefficients for the climatic zones be revised? (b) Should the total window and door area be restricted? (c) What additional requirements should be imposed to prevent condensation in the wall, ceiling and floor cavities of mobile homes and to remove excessive moisture from the interior of the mobile home? (d) Are the test procedures and limits or energy efficiency ratios established by the standards for heat producing and cooling appliances adequate to limit energy consumption? (e) Should the use of storm windows or insulated glass be required for all climatic zones? (f) What requirements can be established to more effectively control heat losses from air infiltration? (g) Should minimum levels of air infiltration be established to insure that the air quality does not go below limits which could impair the health of the occupants? (h) Should controls be established to limit the amount of certain air pollutants, such as formaldehyde, in the living space of a mobile home? (i) What criteria should be established for determining acceptability of insulating materials (i.e., foam plastic, cellulosic fiber, etc.)?

**5. Structural System Performance**

Are the standards adequate to provide sufficient resistance to structural loads and environmental effects to insure safe performance and long term durability? Specifically, (a) What provisions are necessary to assure that adhesives have adequate strength and durability? (b) What provisions should be clarified as acceptable engineering design assumptions for the distribution of lateral forces through the structure? (c) What levels of protection for exterior coverings and fasteners should be established to prevent corrosion of those materials? (d) Are the standards adequate to protect the structure from damage due to moisture migration? (e) In states where overlapping snow load zones exist in the present standards, should the standards be revised to utilize the most severe of those requirements? (f) What provisions should be considered to prevent warping of floor systems (i.e., installation of vapor barrier, etc.)? (g) What specific procedures should be established to qualify structural components during initial and follow-up testing periods (i.e., number of tests performed for initial qualification, frequency of follow-up tests, failure of a tested component under follow-up evaluation, etc.)?

**6. Wind Safety**

Are the design requirements adequate to maintain structural intergrity and resist overturning from high velocity winds? Specifically, (a) How should the standards be revised to assure that components, fasteners and the integrated structure are adequate to resist high wind forces? (b) Are the design requirements for anchoring systems adequate to prevent overturning and lateral movement resulting from wind forces? (c) Where more than one wind zone is specified in a given state, should the standards be revised to utilize the more restrictive requirement for the entire state?

**7. Protection Against Freezing**

Are the standards adequate to prevent damage from freezing to components and systems of the mobile home? Specifically, (a) What additional provisions should be incorporated into the standards to limit the freeze-up of water lines both internal and external to the mobile home? (b) What provisions should be considered to assure that egress windows do not freeze, including stipulations for thermal breaks, sealed insulating glass, or the use of exterior rather than interior mounted storm windows?

**8. Glazing Requirements**

Do the safety glazing provisions of the standards provide adequate protection against hazardous impact? Specifically, (a) Should the Department adopt the architectural glazing provisions recently adopted by CPSC? (b) Should mirror wardrobe doors be required to be backed by a material capable of being a wardrobe door itself?

The Department also requests comments on areas of the standards not already discussed and any other information which will assist the Department in developing more effective standards. Additional information that will be useful to the Department includes:

a. Cost data for anticipated revisions;

b. Potential benefits of anticipated revisions;

c. Negative effects of anticipated revisions;

d. Need for clarification; and

e. Problems or areas not covered by the present standards.

The Department has not yet determined but is presently considering the necessity for preparing either an Environmental Impact Statement or a Regulatory Analysis or both.

This notice is being issued pursuant to the provisions of section 604(d) of the National Mobile Home Construction and Safety Standards Act of 1974.

(Secs. 604, 625 of the National Mobile Home Construction and Safety Standards Act of 1974, (42 U.S.C. 5403 and 5424))

Issued at Washington, D.C., May 30, 1979.

**Richard C. D. Fleming,**

*General Deputy Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.*

[FR Doc. 79-17672 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-01-M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

**[CGD 79-045]**

**[33 CFR Part 110]**

## Disestablishment of Special Anchorage Area, Lake Mead, Nev.

**AGENCY:** Coast Guard.

**ACTION:** Proposed rule.

**SUMMARY:** At the request of the U.S. National Park Service, Boulder City, Nevada, the Coast Guard is proposing to disestablish Special Anchorage Area (e)(2), Lake Mead, Nevada. Portions of the anchorage extend into a narrow section of the Lake which is highly transited. Disestablishment of this special anchorage, in which unlighted vessels may anchor, would enhance navigational safety in the area.

**DATES:** Comments must be received on or before July 23, 1979.

**ADDRESSES:** Comments should be submitted to and are available for examination at the Office of the Commander, Eleventh Coast Guard District, Union Bank Building, 400 Oceangate, Long Beach, California 90822.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Howard E. Snow, Office of Marine Environmental and Systems (G-WLE/73), Room 7315, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20950, (202)-426-1934.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include the writers name and address, identify this notice (CGD 79-045), and give the reasons for the comment. All comments received before the expiration date of the comment period will be considered before final action is taken on this proposal. No public hearing is planned but one may be held at a time and place to be set in a later notice in the **Federal Register** if requested in writing by an interested person raising a genuine issue and desiring to comment orally at a public hearing.

**DRAFTING INFORMATION:** The principal persons involved in drafting this proposal are Lieutenant Commander H. E. Snow, Project Manager, Office of Marine Environment and Systems, and Lieutenant J. W. Salter, Project Attorney Office of the Chief Counsel.

**Discussion of Proposed Rule**

At the request of the U.S. National Park Service, Boulder City, Nevada, the Coast Guard is proposing to disestablish Special Anchorage Area (e)(2), Lake Mead, Nevada. The Park Service has indicated the area has not been used as an anchorage for over ten years. Additionally, portions of the anchorage extend into a narrow section of the lake which is highly transited. Therefore, disestablishment of this anchorage, in which unlighted vessels may anchor, would enhance navigational safety in the area. Adequate anchorage space will be provided for the area by the 10 additional special anchorage located in various parts of Lake Mead.

An Environmental Assessment was completed in April 1979 which determined that there would be no impact on the quality of the human environment.

The Coast Guard has determined, in accordance with the Department of Transportation's "Regulatory Policies and Procedure", (44 FR 11034) that this amendment is not significant. The impact of this amendment will be minimal, and accordingly, it does not warrant full evaluation. Lake Mead contains 10 additional special anchorages that will provide adequate anchorage space in the area.

**§ 110.127 [Amended]**

In consideration of the foregoing it is proposed to amend Part 110 of Title 33, Code of Federal Regulations by deleting § 110.127(e)(2).

(Sec. 1, 30 Stat. 98 as amended (33 U.S.C. 180); sec. 6(g)(1)(B), 80 Stat. 937 (49 U.S.C. 1655(g)(1)(B)); 49 CFR 1.46(c)(2).).

Dated: May 31, 1979.

**R. H. Scarborough,**

*Vice Admiral, U.S. Coast Guard, Acting Commandant.*

[FR Doc. 79-17776 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-14-M

**[33 CFR Parts 157, 164]**

**[46 CFR Parts 30, 32, 34]**

**[CGD 77-058b, 77-063, 77-057a]**

## Tanker Safety and Pollution Prevention

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of delay in publishing final regulations.

**SUMMARY:** This document gives notice of the delay in issuing final regulations for segregated ballast tanks, dedicated clean ballast tanks, crude oil washing systems, inert gas and deck foam

systems, and improved steering gear standards on tank vessels. This delay is necessitated by the longer than expected process of developing proposed regulations and by the recommendations of several commenters to hold certain provisions of the proposed regulations in abeyance until completion of the Eleventh Session of the Intergovernmental Maritime Consultative Organization (IMCO) sponsored Marine Environmental Protection Council. This document informs the public that although the final regulations will be published and become effective in the fall of 1979, under the provisions of the Port and Tanker Safety Act, those regulations will provide that a tank vessel that is contracted for after June 1, 1979, but before issuance of the final regulations, must be in compliance with the applicable requirements of the Act and the final regulations in order to be issued a Certificate of Inspection or a Certificate of Compliance.

**ADDRESSES:** A copy of the information contained in the subject dockets is available for examination at the Marine Safety Council (G–GMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

**FOR FURTHER INFORMATION CONTACT:** Commander George F. Ireland, Merchant Marine Technical Division, (G–MMT–1/82), Room 8207, U.S. Coast Guard, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590, Telephone: (202) 426–4431.

**SUPPLEMENTARY INFORMATION:** The purpose of this notice is to inform the public that—

(1) the proposed regulations of February 12, 1979 for tank vessels, implementing the standards contained in the *Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973*, the *Protocol of 1978 Relating to the International Convention for the Safety of Life at Sea, 1974* and certain requirements of Subsection 7 of Section 5 of the Port and Tanker Safety Act of 1978, are expected to be published as final regulations no later than October 1, 1979; and

(2) although these final regulations will be published and become effective in the fall of 1979, under the provisions of the Port and Tanker Safety Act, the regulations will provide that a tank vessel that is contracted for after June 1, 1979, but before the issuance of the final regulations, must be in compliance with the applicable requirements of the Act and the final regulations in order to be issued a Certificate of Inspection or a Certificate of Compliance.

**Discussion**

In the February 12, 1979 **Federal Register** (44 FR 8984), the Coast Guard issued proposed regulations for certain tank vessels which included standards for segregated ballast tanks, dedicated clean ballast tanks, and crude oil washing systems (CGD 77–058b), improved steering gear (CGD 77–063), and inert gas and deck foam systems (CGD 77–057a). The proposed standards are essentially the same as the standards and recommendations contained in the *Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973* and the *Protocol of 1978 Relating to the International Convention for the Safety of Life at Sea, 1974* which were developed at the IMCO sponsored Tanker Safety and Pollution Prevention (TSPP) Conference. The proposal also implements the majority of Subsection 7 of Section 5 of the Port and Tanker Safety Act of 1978. Under the TSPP Protocols and the Port and Tanker Safety Act, certain tank vessels contracted for after June 1, 1979 will have to comply with specified equipment and construction standards. A Draft Regulatory Analysis and Environmental Impact Statement regarding these proposed regulations was prepared and made available to the public on February 20, 1979.

Interested persons were given an opportunity to submit written comments to the Coast Guard concerning the proposal until April 16, 1979. Two public hearings were held, one in Washington, D.C. on March 21, 1979 and the other in San Francisco on March 28, 1979. Fifty-nine commenters have responded to the proposed regulations in writing and through the public hearings. The Coast Guard is now evaluating those comments in preparation for publishing final regulations.

The Coast Guard originally planned to issue final regulations before June 1, 1979, for the guidance of interested parties entering into tanker construction contracts after June 1, 1979. It is now planned, instead, to issue final regulations no later than October 1, 1979. By law, however, the Port and Tanker Safety Act of 1978 mandates that regulations be issued requiring certain tank vessels contracted for after June 1, 1979, to comply with the applicable construction and equipment requirements contained in the law. Similar requirements exist for tank vessels whose construction is started after January 1, 1980. Preparation of the proposed regulations was a complex process of rewording the language of the TSPP Conference into language acceptable for issuance as U.S regulations. This process took longer than expected, resulting in publication of the proposed regulations three months later than planned.

In addition, implementing details of some provisions of the TSPP Protocols, from which the proposed regulations were developed, are undergoing evaluation by IMCO and will be discussed at the upcoming Eleventh Session of the Marine Environmental Protection Council (MEPC XI) Meeting on June 11–15, 1979. A number of commenters have recommended holding the regulations regarding these provisions in abeyance until MEPC XI has made a determination on these items. The Coast Guard agrees that these matters should be resolved at IMCO prior to issuing final regulations.

In view of these events, the Coast Guard has decided to delay issuing final rules.

Taking into account public comments received, the Coast Guard is currently formulating final regulations on the issues not to be discussed at MEPC XI (which is a majority of the items). At the same time a Final Regulatory Analysis and Environmental Impact Statement is being prepared. Upon completion of MEPC XI, the Coast Guard will finalize as regulations, those remaining details which are to be discussed at MEPC XI. The entire package (final regulations and Final Regulatory Analysis and EIS) will then be forwarded for administrative review and approval. Coast Guard and Department of Transportation procedures provide that the Final EIS will be made available to the public 30 days prior to the effective date of final regulations.

This notice is to advise interested persons that although the final regulations for tanker safety and pollution prevention will not be published and become effective until the fall of 1979, under the provisions of the Port and Tanker Safety Act, those regulations willl provide that a tank vessel that is contracted for after June 1, 1979, but before issuance of the final regulations, must be in compliance with the regulations before a Certificate of Inspection or a Certificate of Compliance will be issued after completion of construction.

(Sec. 5, Pub. L. 95–474 (46 U.S.C. 391a); 49 CFR 1.46).

Dated: June 4, 1979.

**J. P. Stewart,**

*Rear Admiral, U.S. Coast Guard, Acting Commandant.*

[FR Doc. 79-17778 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### [36 CFR Part 219]

### National Forest System Land and Resource Management Planning; Public Meeting on Proposed Guidelines

**AGENCY:** Forest Service. USDA.

**ACTION:** A National Forest Management Act Committee of Scientists' meeting on proposed rules to guide land and resource management planning on the National Forest System.

**SUMMARY:** A Committee of Scientists' meeting will be held regarding the proposed rules published in the May 4, 1979 **Federal Register**, Volume 44, No. 88 (pages 26,583–26,599), by the Department of Agriculture, pursuant to Section 6 of the National Forest Management Act.

**DATES:** Committee of Scientists' meeting: June 20–21, 1979—8:30 a.m.

**ADDRESS:** Meeting location: Southeastern Forest Experiment Station, Post Office Building, Otis Street, Asheville, North Carolina.

**FOR FUTHER INFORMATION CONTACT:** Charles R. Hartgraves, Director, Land Management Planning, P.O. Box 2417, Washington, D.C. 20013 (202–447–6697).

**SUPPLEMENTARY INFORMATION:**

Notice of Meeting

There will be a Committee of Scientists' meeting in Asheville, North Carolina, June 20–21, 1979. The purpose of the meeting is to review the revised proposed NFMA rules published in the May 4, 1979 **Federal Register** Volume 44, No. 88 (pages 26,583–26,599), and to prepare a report to the Secretary of Agriculture concerning their technical adequacy. The meeting will be held at the Southeastern Forest Experiment Station, Post Office Building, Otis Street, Asheville, North Carolina.

The Comittee prepared a report to the Secretary on the proposed rules which were published in the August 31, 1979 **Federal Register**, Volume 43, No. 170 (pages 39,0046–39,059). The Committee's report on the technical adequacy of the August 31, 1979 proposed rules was published in the May 4, 1979 **Federal Register**, Volume 44, No. 88, (pages 26,599–26,657).

The report to be prepared at the June 20–21, 1979 meeting will evaluate the second draft rules published in the May 4, 1979 **Federal Register.**

Dated: May 31, 1979.

**W. D. Williams,**

*Acting Deputy Chief.*

[FR Doc. 79-17727 Filed 6-6-79; 8:45 am]

BILLING CODE 3410-11-M

## ENVIRONMENTAL PROTECTION AGENCY

### [40 CFR Part 65]

### [FRL 1242-4]

### Proposed Delayed Compliance Order for A. P. Green Refractories Co., Freeport, Tex.

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to issue a delayed compliance order (DCO) to A. P. Green Refractories Co., located in Freeport, Texas. The DCO requires the company to bring air emissions from its shaft kiln stack into compliance with certain regulations contained in the federally approved Texas State implementation plan (SIP). Because the company is unable to comply with these regulations at this time, the proposed DCO would establish an expeditious schedule requiring final compliance by July 1, 1979. Source compliance with the order would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act for violation of the SIP regulations covered by the order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the order.

**DATES:** Written comments must be received on or before July 9, 1979. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after 21 days prior notice of the date, time, and place of the hearing has been given in this publication.

**ADDRESSES:** Comments and requests for a public hearing should be submitted to the Director, Enforcement Division, EPA, Region 6, First International Building, 1201 Elm Street, Dallas, Texas 75270. Material supporting the order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** James L. Veach, EPA, Region 6, First International Building, 1201 Elm Street, Dallas, Texas 75270, telephone (214)767–2760.

**SUPPLEMENTARY INFORMATION:** A. P. Green Refractories Co. operates a refractory production facility at Freeport, Texas. The proposed order addresses emissions from the shaft kiln stack at this facility, which is subject to Texas Air Control Board Regulation I, Rule 105.1, particulate emissions limitations, and Rule 103.1, opacity limitations. These regulations limit the emissions of particulates and are part of the federally approved Texas State implementation plan. The order requires final compliance with the regulation by July 1, 1979, and the source has consented to its terms. The source has agreed to meet the order's increments during the period of this informal rulemaking. The source has satisfied the first two increments contained in the order.

The proposed order satisfies the applicable requirements of Section 113(d) of the Clean Air Act (the Act). If the order is issued, source compliance with its terms would preclude further EPA enforcement action under section 113 of the Act against the source for violations of the regulations covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether EPA should issue the order. Testimony given at any public hearing concerning the order will also be considered. After the public comment period and any public hearing, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601)

Dated: June 1, 1979.

**Adlene Harrison,**

*Regional Administrator, Region 6.*

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter I, as follows:

## PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.480 to reflect approval of the following delayed complaince order.

[Docket No. DCO–TX–79–1]

**United States Environmental Protection Agency Region 6**

In the matter of A. P. Green Refractories Co., Freeport, Texas (Docket No. DCO–TX–79–1). Proceedings under section 113(d) of the Clean Air Act, as amended.

**Delayed Compliance Order**

This order is issued pursuant to Section 113(d)(1) of the Clean Air Act, as amended, 42 U.S.C. 7413(d)(1) (hereinafter referred to as the "Act"). This order contains a schedule for compliance and reporting requirements. Public notice, opportunity for a public hearing, and 30 days notice to the State of Texas has been provided pursuant to Section 113(d)(1) of the Act.

**Findings**

On June 29, 1978, the U.S. Environmental Protection Agency (EPA) issued a Notice of Violation to A. P. Green Refractories Co. (hereinafter referred to as the "Company") upon a finding that the shaft kiln stack at the Freeport, Texas, facility was in violation of the Texas Air Control Board Regulation I, Rule 105.1, a part of the applicable Texas implementation plan, which limits the emissions of particulate matter from any source.

Emission tests for particulate matter from the shaft kiln stack were conducted on November 1–2, 1978, which established that the violation was continuing. In addition, on November 1–2, 1978, readings of the opacity of emissions from the shaft kiln stack demonstrated violations of Texas Air Control Board Regulation I, Rule 103.1, a part of the applicable Texas implementation plan limiting the opacity of emissions from any source.

After a thorough investigation and analysis of all relevant facts, including the compliance plan submitted by the Company at EPA's request, it is determined that the schedule for compliance set forth in this order is expeditious as practicable, and that the terms of this order comply with Section 113(d) of the Act.

**Ordered I.—Abatement Program**

That the Company shall complete the following acts with respect to control of particulate matter emissions from the shaft kiln stack at its Freeport, Texas, facility, on or before the dates specified:

1. February 15, 1979—Complete engineering design. (Completed)
2. March 15, 1979—Complete detail design and start fabrication. (Completed)
3. May 1, 1979—Begin field work.
4. June 15, 1979—Complete field work.
5. June 30, 1979—Achieve compliance with Texas Air Control Board Regulation I, Rules 103.1 and 105.1.

**II.—Interim Requirements**

Prior to completion of the acts required in Part I—Abatement Program above, all exhaust gases form the shaft kiln shall be vented through the existing cyclones to remove particulate matter from the exhaust gases. During the time period covered by Part I—Abatement Program above, the Company shall maintain the existing cyclones to ensure that they are in operable condition, and operate the cyclones at all times while the shaft kiln is operating.

**III.—Emissions Tests**

That no later than August 1, 1979, the Company conduct emission tests for particulate matter on the combined emissions of exhaust gases from the shaft kiln and the Herreshoff furnace. The emission tests shall be conducted in accordance with the testing procedures outlined in the Texas Air Control Board Compliance Manual (Revised October 1975).

**IV.—Reporting Requirements**

A. That the Company report in writing to EPA no later than five (5) days after the date specified for taking each action required by Part I—Abatement Program above, whether such action was taken.

B. That within five (5) days after the date specified for conducting the emission tests required by Part III—Emission Tests, the company shall notify EPA in writing whether or not the emission tests were completed, supplying the dates when the emission tests were conducted.

C. That no later than September 1, 1979, the Company is to submit a written report of the sampling of the emissions.

D. That the Company provide EPA within thirty (30) days notice prior to the conducting of the emission tests required by Part III—Emission Tests in order to afford an opportunity to evaluate the test procedure and to have an observer present at such testing.

E. If delay is anticipated in meeting any requirement of this order, the Company shall immediately notify EPA in writing of the anticipated delay and reasons therefor. Notification to EPA of any anticipated delay shall not excuse the delay.

F. All submittals and notifications to EPA pursuant to this order shall be made to the Director, Enforcement Division, EPA, Region 6, First International Building, 1201 Elm Street, Dallas, Texas 75270.

**V.—Compliance Responsibility**

Nothing herein shall relieve the Company from complying with all other applicable federal, state, or local regulations.

**VI.—Termination of Order**

This order shall be terminated in accordance with Section 113(d)(8) of the Act if the Administrator determines on the record, after notice and hearing, that an inability to comply with Texas Air Control Board Regulation I, Rules 103.1 and 105.1 no longer exists.

**VII.—Violations of Requirements**

Violation of any requirement of this order shall result in one or more of the following actions:

1. Enforcement of such requirement through the commencement of a civil action for injunctive relief and the assessment of civil penalties pursuant to Section 113(b) of the Act, or a criminal prosecution pursuant to Section 113(c) of the Act, or both.

2. Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of Texas Air Control Board Regulation I, Rules 103.1 and 105.1 in accordance with Section 113(b) and/or (c) of the Act.

3. If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to Section 120 of the Act.

**VIII.—Noncompliance Penalty**

The Company is hereby notified that its failure to achieve compliance by July 1, 1979, will result in a requirement to pay a noncompliance penalty under Section 120 of the Act. In the event of such failure, the Company will be formally notified, pursuant to Section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

**IX.—Effective Date**

This order is effective upon **Federal Register** promulgation.

**Consent Provision**

A. P. Green Refractories Company acknowledges that its Freeport, Texas, facility is in violation of Texas Air Control Board Regulation I, Rules 103.1 and 105.1, consents to the terms of the order, and hereby waives any and all rights under any provision of law to challenge this order.

Date: _____.

A. P. Green Refractories Co.

[FR Doc. 79–17739 Filed 6–6–79; 8:45 am]

BILLING CODE 6560–01–M

**[40 CFR Part 65]**

**[FRL 1242–5; Docket No. 79–63]**

## Proposed Delayed Compliance Order for Airco Alloys, Division of Airco, Inc., Calvert City, Ky.

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to issue a Federal Delayed Compliance Order (DCO) to Airco Alloys, a division of Airco, Inc., located in Calvert City, Kentucky. The DCO requires Airco Alloys to bring air emissions from its ferroalloy plant into compliance with certain air pollution control regulations contained in the federally-approved Kentucky State Implementation Plan (SIP). Because Airco Alloys is unable to comply with these regulations at this time, the proposed DCO would establish an expeditious schedule requiring final compliance by July 1, 1979. If issued by EPA, the federal DCO would prevent suits under the federal enforcement and citizen suit provision(s) of the Clean Air

Act for violation of the SIP regulations covered by the Order.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on this proposed DCO.

**DATES:** Written comments must be received on or before July 9, 1979. All requests for a public hearing must be received on or before [fifteen days from date of publication] and should be accompanied by a statement as to why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after at least twenty-one days prior notice of the date, time, and place of the hearing has been given in this publication.

**ADDRESSES:** Comments and requests for a public hearing should be submitted to the Director, Enforcement Division, EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308. Material supporting the Delayed Compliance Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Richard S. DuBose, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30308, Telephone Number (404) 881–4298.

**SUPPLEMENTARY INFORMATION:** Airco Alloys operates a ferroalloy plant at Calvert City, Kentucky. The proposed order addresses emissions from the metallurgical treatment process and the crushing and screening operations at this ferroalloy plant, which are subject to Kentucky Air Pollution Control Regulations 401 KAR 3:060 Section 4(3) and 401 KAR 3:060 Section 14(2), respectively. These regulations limit the emission of particulate matter and fugitive emissions, respectively, and are part of the federally approved Kentucky State Implementation Plan. The Order requires final compliance with the regulation by July 1, 1979.

The proposed Delayed Compliance Order satisfies the applicable requirements of section 113(d) of the Act. If the Federal Delayed Compliance Order is issued, source compliance with its terms would preclude further EPA enforcement action under Section 113 of the Act against this source for violations of the state air pollution control regulations covered by the Order during the period the Delayed Compliance Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would also be barred. In the event of an emergency air pollution episode, the source would have to comply with all of the provisions of Section 303 of the Act. Comments received by the date specified above will be considered in determining whether EPA should issue the Delayed Compliance Order. Testimony given at any public hearing concerning the Delayed Compliance Order will also be considered. After the public comment period, and after EPA has reviewed any comments received in response to this notice, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

Dated: June 1, 1979.

**John C. White,**

*Regional Administrator, Region IV.*

In consideration of the foregoing, it is proposed to amend Part 65 of Chapter 1, Title 40, Code of Federal Regulations as follows:

## PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.220 to reflect approval of the following order:

[Docket No. 79–63]

**United States Environmental Protection Agency, Region IV**

In the matter of Airco Alloys, a Division of Airco, Inc., Calvert City, Kentucky (Docket No. 79–63).

**Delayed Compliance Order**

The following Order is issued this date pursuant to Section 113(d)(1) of the Clean Air Act, as amended, 42 U.S.C. § 7413 (hereinafter referred to as the "Act"). Public notice and opportunity for public hearing have been provided. The Order contains a schedule with a timetable for compliance, interim requirements and reporting requirements. Final compliance is required as expeditously as practicable, but not later than July 1, 1979. The source is hereby notified that it may be required to pay a noncompliance penalty in the event it fails to achieve final compliance by July 1, 1979. In the event of such failure, the Company will be formally notified, pursuant to Section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance. Nothing in this Order shall be construed as a waiver of the right of the Company to contest the validity of any noncompliance penalty, or the legality, constitutionality or reasonableness of the imposition of noncompliance penalties or any regulations adopted pursuant to Section 120 of the Act, 42 U.S.C. § 7420. The Commonwealth of Kentucky has been given thirty (30) days notice of this Order.

**Findings**

On April 26, 1976, the Director of the Enforcement Division, Region IV of the United States Environmental Protection Agency (hereinafter referred to as U.S. EPA), pursuant to authority delegated to him by the Administrator, issued a Notice of Violation to the Airco Alloys Division, Airco Incorporated (hereinafter referred to as the "Company") that certain alloy furnaces, numbered 4, 5, 6, 7, 8, 9, 12, 13, 14, 15 and 16, in Calvert City, Kentucky, were found in violation of Kentucky Air Pollution Control Regulation 401 KAR 3:060, Section 4(3), dealing with the control of particulate emissions from process sources.

Pursuant to Section 113(a)(4) of the Act, opportunity to confer with the representatives of the U.S. EPA was given to the Company. Informal conferences were held on March 14 and April 3, 1979. On the basis of information presented at the above-mentioned conferences and obtained during compliance inspections conducted on May 3, 1978, May 25, 1978, and February 27–28, 1979, U.S. EPA finds that particulate emissions from process sources identified in the Notice of Violation of April 26, 1976, have continued beyond the 30th day, as required by Section 113(a)(1) of the Act. Region IV of U.S. EPA has reviewed and formally disapproved in the **Federal Register** a state delayed compliance order issued by the Kentucky Department for Natural Resources and Enivronmental Protection. After a thorough investigation of all relevant facts, U.S. EPA has determined that the Company is currently unable to comply with the applicable Kentucky air pollution control regulations.

Therefore, in consideration of the above, it is hereby Ordered:

**I. Abatement Program**

That the Company shall continue to operate and maintain its present particulate control equipment, and shall undertake additional particulate and fugitive emissions control measures as hereinafter described, so as to comply with the attached Appendices governing an abatement program, incorporated into and made a part of this delayed compliance order for the control of particulate and fugitive emissions at the Company's ferroalloy plant located in Calvert City, Kentucky.

Said Appendices are designated as follows:

(a) Appendix A: Metallurgical treatment process occurring in the vicinity of furnace 13.

(b) Appendix B: Stationary crushing and screening plants numbered 4 and 6.

(c) Appendix C: Stationary crushing and screening plant number 5.

(d) Appendix D: Portable crushing and screening equipment.

(e) Appendix E: Stationary crushing and screening plant number 2.

**II. Reporting—Addressees**

That all reports and other items required by this delayed compliance order are to be made to the Director, Enforcement Division, United States Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30308, with copies to the Director, Division of Air Pollution Control, Commonwealth of Kentucky, Capital Plaza Tower, Frankfort, Kentucky 40601.

**III. Progress Reports and Milestone Certification**

That the Company submit, no later than five (5) days after the end of each month, commencing with the month of April 1979, monthly progress reports which shall contain specific information on the program toward each milestone specified in Part I as well as a cumulative summary of progress to date. If any delay is anticipated in meeting said milestones, the Company shall immediately notify U.S. EPA and the Director, Division of Air Pollution Control, Commonwealth of Kentucky in writing of the anticipated delay and reasons therefor. Any notice of delay hereunder shall in and of itself not be construed as an excuse thereof. In addition, the Company shall submit, no later than five (5) days after the deadline for completing each milestone required by Part I, a certification to U.S. EPA and the Director, Division of Air Pollution Control, Commonwealth of Kentucky, whether such milestone has been met.

**IV. Notice of Tests**

That U.S. EPA and the Director, Division of Air Pollution Control, Commonwealth of Kentucky, be provided with ten (10) days notice prior to conduction any performance tests as required in Part I in order to afford U.S. EPA and the Commonwealth of Kentucky an opportunity to have an observer present at such testing.

**V. Interim Requirements**

That for the period during which this Order is in effect, the Company shall at all times comply with the following interim emission limitations:

(a) As an interim visible emission limit for the metallurgical treatment process in the vicinity of Furnace 13, the visible emissions from all building openings while the metallurgical treatment process is occuring shall not exceed 60% opacity. The compliance status of the metallurgical treatment process in regard to the interim visible emission limit will be determined by using Reference Method 9 as codified in 40 CFR 60, except that visible emission readings will be collected over the entire duration of a treatment cycle and the averaging time will be the length of the entire treatment process. Beginning May 21, 1979, and continuing for each day thereafter until final compliance is achieved, Airco representatives shall collect visible emissions data during at least one complete metallurgical treatment process cycle each day. These daily readings shall be submitted with each monthly progress report.

(b) Regarding the crushing and screening operations, it has been agreed among all parties that there are no practicable interim emission limits or interim requirements which can reasonably be applied to these operations.

If, at any time during the pendency of this Order, the applicable interim visible emission limitation set forth above is exceeded, the Company shall immediately take all reasonable actions necessary to minimize and/or abate such excess emissions and to prevent their recurrence; the Company shall notify U.S. EPA and the Director, Division of Air Pollution Control, Commonwealth of Kentucky, of the occurrences as soon as possible, but no later than forty-eight hours after the start of the occurrence; and the Company shall, within ten days after the termination of each such occurrence, submit to U.S. EPA and the Director, Division of Air Pollution Control, Commonwealth of Kentucky, a written report regarding the occurrence, which shall address the cause(s) of the occurrence and all the efforts the Company has taken to date concerning it.

In addition to the foregoing interim emission limitation for the period during which this Order is in effect, the Company shall take all reasonable steps necessary to comply with other applicable emission limitations contained in the State Implementation Plan insofar as the Company is able.

Furthermore, the Company shall comply with any emergency requirements specified by U.S. EPA pursuant to section 303 of the Clean Air Act, 42 U.S.C. 7603, and by the Commonwealth of Kentucky pursuant to applicable Kentucky state law in order to prevent an imminent and substantial endangerment to human health.

**VI. Continuous Monitoring**

That for the purposes of this delayed compliance order, U.S. EPA finds that the use of continuous monitors is unreasonable.

**VII. Malfunctions and Breakdowns**

That the Company shall perform operation and maintenance practices on all sources as necessary to prevent malfunctions or breakdowns and to reduce emissions in excess of regulations to the maximum extent practicable. When emissions due to sudden and unforeseen malfunction of the affected facility are or may be in excess of the maximum allowables as set forth in this delayed compliance order, for greater than four (4) hours, the Company shall notify U.S. EPA and the Director, Division of Air Pollution Control, Commonwealth of Kentucky, by telephone or telegram as promptly as possible, and in no event later than twelve (12) hours following the start of such malfunction, and shall cause written notice to be sent to U.S. EPA and the Director, Division of Air Pollution Control, Commonwealth of Kentucky, no later than the end of the next working day following the start of such malfunction. Such notices shall specify the name of the affected facility, its location, the address and telephone number of the person responsible for the affected facility, the nature and cause of the malfunction, the date and time when such malfunction was first observed, the expected duration, and an estimate of the physical and chemical composition, rate, and concentration of the emission. The Company shall remedy the malfunction or breakdown as soon as possible thereafter and shall take reasonable steps to reduce emissions in excess of the interim emission limits during the malfunction or breakdown.

U.S. EPA and/or the Director, Division of Air Pollution Control, Commonwealth of Kentucky, shall have the authority during a malfunction or breakdown to require the Company to take specific steps to reduce emissions, including process equipment modifications and/or reductions, or termination if necessary. Within ten (10) days after the termination of a malfunction or breakdown requiring the above notification, the Company shall in a report submit:

(1) The time the excess emission began and ended;

(2) The time of the beginning and end of malfunction or breakdown which is asserted to be the cause of the excess emission;

(3) An estimate of the physical and chemical composition, rate, and concentration of emissions which occurred.

(4) An explanation and, where appropriate, an engineering analysis of the cause of the malfunction or breakdown;

(5) A description of those operating and/or maintenance procedures and practices in use prior to and during the occurrence, which were designed to prevent or minimize the extent and duration of the malfunction or breakdown;

(6) Any other steps taken to minimize the extent or duration of the malfunction or breakdown;

(7) An analysis of what steps will be taken to prevent or minimize similar occurences in the future; and

(8) Such additional information as U.S. EPA or the Director, Division of air Pollution Conirol, Commonwealth of Kentucky, may require.

**VIII. Violation of Requirements**

That violation of any requirement of this Order shall result in immediate enforcement action by U.S. EPA pursuant to Sections 113(d)(9), 113(b), and 113(c)(1) of the Clean Air Act.

**IX. Compliance Responsibility**

That nothing herein shall relieve the source from complying with all other applicable federal, state or local law.

**X. Noncompliance Penalty**

That failure of the Company to achieve compliance with the emission limitations or compliance schedules set forth in this Order by July 1, 1979, or such later date as is provided in accordance with Section 120(b)(3) of the Act may subject the Company to an administratively assessed noncompliance penalty pursuant to the requirements of Section 120 of the Act and any rules and regulations promulgated pursuant thereto, unless the Company is exempted by Section 120(a) (B) or (C) of the Act. In the event of such noncompliance, the Company will be formally notified of its noncompliance pursuant to Section 120(b)(3) of the Act.

**XI. Final Compliance Visible Emission Limits**

That the Company shall achieve and maintain the below listed visible emission limits. Said visible emission limits shall be achieved no later than June 29, 1979, and shall be used to determine final compliance with the applicable Kentucky emission limiting regulations.

The visible emission (VE) limit for each of the following sources will be as follows:

| Source | VE limit (Percent) |
|---|---|
| (a) VE's from all building openings while furnaces are operating under routine smelting/melting conditions and no auxiliary operations are occurring; applies to furnaces 4, 6, 9, 12, 14, 15 and 16 | 15 |
| (b) VE's from all building openings while furnaces are being tapped; applies to furnaces 4, 6, 9, 12, 14, 15 and 16 | 25 |
| (c) VE's from baghouse exhaust outlets while no malfunctions are occurring; applies to all baghouses | 3 |
| (d) VE's from all building openings while furnace 13 is operating under routine melting conditions and no auxiliary operations are occurring; applies to furnace 13 only | 20 |
| (e) VE's from all building openings while the metallurgical treatment process is occurring in the vicinity of furnace 13; applies during metallurgical treatment process only | 40 |
| (f) VE's from all building openings while pouring of metal and slag from ladles into castbeds or molds; applies to products and slag from all furnaces | 40 |
| (g) There is no limitation on visible emissions when a blowing tap (as defined in 40 CFR 60.261) occurs | |

In regard to the VE limits as specified in items (1)(a) through (1)(f) above, the compliance status of all sources will be determine by using EPA Reference Method 9 as codified in 40 CFR 60. The tapping at furnaces 4, 6, 9, 12, 14, 15 and 16 is considered to begin with the initiation of the process of opening the tap hole and to be concluded when the process of plugging the tap hole is completed. The metallurgical treatment process is considered to begin with the pouring of silicomanganese into the reaction ladle, or with the tapping of furnace 13 into ladle 13A if molten silicomanganese is not poured into the reaction ladle and silicomanganese is added cold, and to conclude with the pouring of the reaction product into the holding ladle.

Dated:

*Administrator.*

**Consent** [1]

The Company acknowledges that the particulate and fugitive emissions from its facility in Calvert City, Kentucky, are in violation of the applicable emission limitations contained in the federally-approved Kentucky State Implementation Plan. The Company has reviewed this delayed compliance order, believes it to be a reasonable and expeditious means to achieve compliance with the applicable fugitive and particulate emission limiting regulations as contained in the federally-approved Kentucky State Implementation Plan, and consents to all of the requirements and terms of this delayed compliance order.

Furthermore, the Company acknowledges the necessity of complying with the interim emission limitations and abatement procedures contained herein which are designed to ensure the attainment of national ambient air quality standards for the specified pollutants and consents to said interim emission limitations and abatement procedures in order to protect the public health and welfare.

The Company hereby represents that it has full corporate authority and the necessary corporate approval to enter into and perform in accordance with the terms and provisions of this delayed compliance order. The signatory below represents that he has the requisite corporate authority to execute this consent on behalf of the company.

Dated: ———————.

[1] This consent is hereby attached to an incorporated by reference into Delayed Compliance Order 79-63 issued to Airco Alloys on ———— pursuant to Section 113(d)(1) of the Clean Air Act, 42 U.S.C. § 7413.

Airco Alloys Division of AIRCO, INC.

**Appendix A.—Delayed Compliance Order** [2]

Airco Alloys shall complete the following acts with respect to the control of particulate emissions from the metallurgical treatment process which occurs in the vicinity of furnace 13 at the Airco Alloys facility located in Calvert City, Kentucky, on or before the dates specified:

(1) March 28, 1979—Complete engineering for sheeting for building closure and hood addition to improve collection of particulate matter for furnace 13 and the metallurgical treatment process.

(2) April 15, 1979—Complete material purchases for the sheeting for building closure and hood addition referred to in item (1) of this Appendix.

(3) May 1, 1979—Initiate on-site construction or modification of sheeting for building closure and hood addition referred to in item (1) of this Appendix.

(4) June 15, 1979—Complete installation or necessary modification of sheeting for building closure and hood addition referred to in item (1) of this Appendix.

(5) June 28, 1979—Complete operational evaluation and adjustments of sheeting for building closure and hood addition referred to in item (1) of this Appendix.

(6) June 29, 1979—Achieve and demonstrate final compliance with the final visible emission limit specified in Part XI of Delayed Compliance Order 79-63 and with Kentucky Air Pollution Control Regulation 401 KAR 3:060, Section 4(3), by means of performance tests conducted in accordance with EPA Reference Method 9 as codified in 40 CFR 60 and certify such compliance to the U.S. Environmental Protection Agency and the Director, Division of Air Pollution Control, Commonwealth of Kentucky.

**Appendix B.—Delayed Compliance Order** [3]

Airco Alloys shall complete the following acts with respect to the control of fugitive emissions from stationary crushing and screening plants numbered 4 and 6 at the Airco Alloys facility located in Calvert City, Kentucky, on or before the dates specified:

(1) February 28, 1979—Complete foundations for baghouse for fugitive emission control.

(2) March 30, 1979—Complete significant material purchases for baghouse for fugitive emission control.

(3) March 30, 1979—Complete erection of collector portion of baghouse for fugitive emission control.

(4) June 1, 1979—Complete erection of ductwork portion of baghouse for fugitive emission control.

(5) June 15, 1979—Complete electrical and mechanical phases of construction of baghouse for fugitive emission control.

(6) June 28, 1979—Complete operational evaluation and adjustments of baghouse for fugitive emission control.

(7) June 29, 1979—Achieve and demonstrate final compliance with the final visible emission limit specified in Part XI of Delayed Compliance Order 79-63 and with Kentucky Air Pollution Control Regulation 401 KAR 3:060, Section 14(2) by means of performance tests conducted in accordance with EPA Reference Method 9 as codified in 40 CFR 60 and certify such compliance to the U.S. Environmental Protection Agency and the Director Division of Air Pollution Control, Commonwealth of Kentucky.

**Appendix C.—Delayed Compliance Order** [4]

Airco Alloys shall complete the following acts with respect to the control of fugitive emissions from stationary crushing and screening plant number 5 at the Airco Alloys facility located in Calvert City, Kentucky, on or before the dates specified:

(1) March 30, 1979—Complete foundations for baghouse for fugitive emission control.

(2) April 1, 1979—Complete significant material purchases for baghouse for fugitive emission control.

(3) April 30, 1979—Complete erection of collector portion of baghouse for fugitive emission control.

(4) June 1, 1979—Complete erection of ductwork portion of baghouse for fugitive emission control.

(5) June 15, 1979—Complete electrical and mechanical phases of construction of baghouse for fugitive emission control.

(6) June 28, 1979—Complete operational evaluation and adjustments of baghouse for fugitive emission control.

(7) June 29, 1979—Achieve and demonstrate final compliance with the final visible emission limit specified in Part XI of Delayed Compliance Order 79-63 and with Kentucky Air Pollution Control Regulation 401 KAR 3:060, Section 14(2), by means of performance tests conducted in accordance with EPA Reference Method 9 as codified in 40 CFR 60 and certify such compliance to the Environmental Protection Agency and the Director, Division of Air Pollution Control, Commonwealth of Kentucky.

[2] This Appendix is attached to and incorporated by reference into Delayed Compliance Order 79-63 issued to Airco Alloys on ———— pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(d).

[3] This Appendix is attached to and incorporated by reference into Delayed Compliance Order 79-63 issued to Airco Alloys on ———— pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)

[4] This Appendix is attached to and incorporated by reference into Delayed Compliance Order 79-63 issued to Airco Alloys on ———— pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

**Appendix D.—Delayed Compliance Order** [5]

Airco Alloys shall complete the following acts with respect to the control of fugitive emissions from portable crushing and screening equipment at the Airco Alloys facility located in Calvert City, Kentucky, on or before the dates specified:

(1) April 1, 1979—Complete engineering for wet suppression devices for fugitive emission control.

(2) April 15, 1979—Complete significant material purchases for wet suppression devices for fugitive emission control.

(3) April 30, 1979—Initiate on-site construction of wet suppression devices for fugitive emission control.

(4) May 30, 1979—Complete installation of wet suppression devices for fugutive emission control.

(5) June 28, 1979—Complete operational evaluation and adjustments of wet suppression devices for fugitive emission control.

(6) June 29, 1979—Achieve and demonstrate final compliance with Kentucky Air Pollution Control Regulation 401 KAR 3:060, Section 14(2), and certify such complicance to the Director, Division of Air Pollution Control, Commonwealth of Kentucky.

(7) July 1, 1979—The use of portable grizzlies which will not be controlled by the installation of wet suppression devices in accordance with the schedule specified in items (1) through (6) of this Appendix will be discontinued before July 1, 1979.

**Appendix E.—Delayed Compliance Order** [6]

Airco Alloys shall complete the following acts with respect to the control of fugitive emissions from stationary crushing and screening plant number 2 at the Airco Alloys facility located in Calvert City, Kentucky, on or before the dates specified:

(1) July 1, 1979—Stationary crushing and screening plant number 2 shall be rendered non-operational.

[FR Doc. 79-17740 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

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[5] This Appendix is attached to and incorporated by reference into Delayed Compliance Order 79-63 issued to Airco Alloys on———pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

[6] This Appendix is hereby attached to and incorporated by reference into Delayed Compliance Order 79-63 issued to Airco Alloys on———pursuant to Section 113(d)(1) of the Clean Air Act, 42 U.S.C. § 7413(d).

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## [40 CFR Part 65]

## [FRL 1240-3]

## Withdrawal of a Proposed Approval of an Administrative Order Issued by Minnesota Pollution Control Agency to Wilson Foods Corp.

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Withdrawal or Proposed Approval.

**SUMMARY:** The U.S. EPA is withdrawing its proposed approval of an Administrative Order issued by the Minnesota Pollution Control Agency to Wilson Foods Corporation, Albert Lea, Minnesota. The proposed approval was published in the **Federal Register** on March 28, 1979 (44 FR 18532). The Notice invited public comments on the proposed approval. Comments were received concerning the Minnesotra Regulations cited in the Order. The Minnesota Pollution Control Agency amended their regulations in 1976. This amendment included changes to APC-4 and APC-11. The amended APC-11. The amended APC-4 and APC-11 did not become part of the Minnesota State Implementation Plan (SIP). The U.S. EPA does not have the authority to approve or disapprove a State Order which does not concern SIP regulations. Therefore, the U.S. EPA is withdrawing their propposed approval of the State Delayed Compliance Order for Wilson Foods Corporation.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cynthia Colantoni, Enforcement Division, U.S. EPA, 230 South Dearborn Street, Illinois 60604, (312) 353-2082.

Dated: May 14, 1979.

**John McGuire,**

*Regional Administrator.*

[FR Doc 17805 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## [46 CFR Parts 31 and 35]

## [CGD 73-243]

## Flammable and Combustible Cargoes; Cargo Information Cards; Extension of Comment Period

**AGENCY:** Coast Guard, DOT.

**ACTION:** Supplemental notice—extension of comment period.

**SUMMARY:** In the **Federal Register** of March 29, 1979 (44 FR 18709) the Coast Guard proposed to amend the rules for a barge that carries flammable or combustible cargoes to require cargo information cards for the flammable and combustible cargoes it has on board. This notice extends the comment period for the proposal to June 29, 1979.

The original closing date was May 11, 1979. The American Waterways Operators (AWO) has requested an extension of the comment period in order to allow additional time for thorough review of the proposal.

**DATES:** Comments must be received on or before June 29, 1979.

**ADDRESS:** Comments should be submitted to Commandant (G-CMC/81) (CGD 73-243), U.S. Coast Guard, Washington, D.C. 20590.

Comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Query, Office of Merchant Marine Safety (G-MHM/83), Room 8309, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. (202 426-1217).

**Drafting Information**

The principal persons involved in drafting this proposal are: Robert M. Query, Project Manager, Office of Merchant Marine Safety and Lt. John W. Salter, Project Attorney, Office of the Chief Counsel.

(46 U.S.C. 170; 46 U.S.C. 391a; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b) and (n)(4)).

Dated: May 25, 1979.

**Henry H. Bell,**

*Rear Admiral, U.S. Coast Guard, Chief Office of Merchant Marine Safety.*

[FR Doc. 79-17775 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-14-M

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 94

## [SS Docket No. 79-18; RM-2824; RM-1635 RM-1849; and RM-2045]

## Providing Regulations for Use in Public Utility Distribution Automation Systems; Order Extending Time for Filing Comments and Reply Comments

**AGENCY:** Federal Communications Commission.

**ACTION:** Order Further Extending Time for Filing Comments.

**SUMMARY:** The FCC has granted the Utilities Telecommuncations Council's request for a further extension of time for filing comments and reply comments in the matter of a proposed amendment of Part 94 regulations concerning use of radio in public utility distribution automation systems. This request was supported by a new development which indicates an interference problem with certain frequencies set forth in the notice of proposed rule making (43 FR 54106, November 20, 1978).

**DATES:** Comments now due June 15, 1979 and reply comments now due July 15, 1979.

**ADDRESSES:** Federal Communications Commission 1919 M Street, N.W., Washington, D.C. 20554, Room 5120.

**FOR FURTHER INFORMATION CONTACT:** Eugene Thomson, Private Radio Bureau (202) 632-6497.

Adopted: May 29, 1979.

Released: May 30, 1979.

By the Chief, Private Radio Bureau.

In the Matter of: Amendment of Part 94 of the Rules to Provide Regulations for Use of Radio in Public Utility Distribution Automation Systems, SS Docket No. 79-18, RM-2824, RM-1635, RM-1849, RM-2045, Order Further Extending Time for Filing Comments [44 FR 25886].

1. The Utilities Telecommunications Council (UTC) has requested a further extension of time until June 15, 1979, within which to file comments in the above entitled matter. It also requested that the date for filing reply comments be extended to July 15, 1979. Comments and reply comments are now due May 30, and June 30, 1979, respectively.

2. In support of its request, the petitioner indicates that although UTC was able to complete the reports and studies mentioned in its earlier Motion, and was ready to make filing on May 30, a new development indicated a possible interference problem with certain frequencies set forth in the Notice of Proposed Rule Making. Approximately two weeks would be needed to thoroughly study and resolve this problem and be prepared to address it in detail in the Comments.

3. It appears that good cause has been shown and that the public interest would be served by granting the additional period asked in order to afford the petitioner and other interested parties a full opportunity for the preparation and presentation of their views in this proceeding.

4. Accordingly, it is ordered, Pursuant to Sections 0.331 and 1.46 of the Commission's Rules, that the time for filing comments in the above-captioned proceeding is Further Extended from May 30, 1979, to June 15, 1979, and for filing reply comments from June 30, 1979, to July 15, 1979.

**Carlos V. Roberts,**

*Chief, Private Radio Bureau.*

[FR Doc. 79-17684 Filed 6-6-79; 8:45 am]

BILLING CODE 6712-01-M

# Notices

Federal Register
Vol. 44, No. 111
Thursday, June 7, 1979

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

### Soil Conservation Service

### Pond Creek Watershed, Texas; Deauthorization of Federal Funding

Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR 622), and Soil Conservation Service gives notice of the deauthorization of Federal funding for the Pond Creek Watershed project, Bell, Falls, and Milan Counties, Texas, effective on May 14, 1979.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program, Pub. L. 83–566, 16 USC 1001–1008)

Dated: May 30, 1979.

Joseph W. Haas,

*Assistant Administrator for Water Resources, Soil Conservation Service.*

[FR Doc. 79-17622 Filed 6-6-79; 8:45 am]

BILLING CODE 3410-16-M

## DEPARTMENT OF COMMERCE

### Office of Federal Statistical Policy and Standards

### Standard Industrial Classification; Procedures and Principles for Revision

**AGENCY:** Office of Federal Statistical Policy and Standards, Department of Commerce.

**ACTION:** Final notice of Procedures and Principles for the revision of the Standard Industrial Classification.

**SUMMARY:** This document outlines the procedures and principles for revision of the Standard Industrial Classification (SIC). Comments received on the proposed procedures published in the December 28, 1978 **Federal Register** have been taken into account.

**Introduction**

The changes are the result of a review of the procedures and principles under which industries are identified for Federal statistical purposes. These definitions must be based on objective procedures and principles formulated so as to identify all industries as consistently as possible. A periodic review is necessary to ensure the objectivity and consistency of the criteria and that relevant data are used.

**Changes**

The most significant change from the 1972 procedures and principles is consideration of temporary industries. The Technical Committee may designate temporary industries to provide comparability between the existing and new SIC. At the next SIC revision each temporary industry would be combined with the appropriate industry.

The other significant change is that specialization or coverage requirements will be lower for new industries that are very large and higher for new industries if they are smaller than average size.

**FOR FURTHER INFORMATION CONTACT:** Milo Peterson, Office of Federal Statistical Policy and Standards, U.S. Department of Commerce, Washington, D.C. 20230, Telephone (202) 673–7977.

Note.—The Department of Commerce has determined that this proposal is not a significant regulation requiring preparation of a regulatory analysis under Executive Order Number 12044.

Courtenay M. Slater,

*Chief Economist for the Department of Commerce.*

Principles and Procedures for the Review and Maintenance of the Establishment Standard Industrial Classification Mannual (Proposal)

**Prepared by the technical committee on industrial classification***

*A. Purpose and Scope.*

This SIC was developed for use in the classification of establishments by type of economic activity in which engaged. It is a classification of establishments rather than of companies or legal entities or enterprises,[1] by kinds of business and not by occupations or commodities. It encompasses all economic activity.

The purposes of this SIC are to facilitate the collection, tabulation, presentation, and analysis of data relating to establishments and to promote uniformity and comparability in the presentation of statistical data collected by various agencies of the U.S. Government. It is also used by state agencies, trade associations, private business and other organizations.

The basic purpose and objective of a periodic review is to update the classification so as to make it possible to better reflect statistically the existing industrial structure of the economy. It should provide the means for introducing new industry detail resulting from economic growth or technological change, as well as for deleting industries no longer significant.

*B. Principles for Review of the Classification*

In the review of the structure and detail of the 1972 edition of the establishment *SIC Manual* (as amended for 1977), the Technical Committee will be guided by the general principles described below. These principles should also be taken into consideration by others, both within and outside of Government, in the preparation of proposed changes.

(1) *Structure of the classification.* The classification should conform to the actual structure of industry as it is found to exist in the American economy. It does not, therefore, follow any single principle, such as the use of the products, market structure, the nature of the raw materials, etc., neither in its detail nor in its basic structure. It is a general-purpose framework which can have its basic detail rearranged for various analytical purposes.

(2) *Unit of classification.* The SIC is designed to classify the establishments

*The Technical Committee on Industrial Classification is chaired by the Office of Federal Statistical Policy and Standards. The following agencies are represented on the Committee: Bureau of the Census, Bureau of Domestic Business Development, Bureau of Economic Analysis, Bureau of Labor Statistics, Bureau of Mines, Department of Agriculture, Department of Energy, Employment and Training Administration, Environmental Protection Agency, Federal Reserve System, Federal Trade Commission, General Services Administration, Internal Revenue Service, International Trade Commission, National Center for Health Statistics, Securities and Exchange Commission, Small Business Administration, Social Security Administration.

[1] A separate classification for companies has been established in the 1974 *Enterprise Standard Industrial Classification Manual.*

according to the kind of economic activity in which such units are engaged.

An *establishment* is an economic unit which produces goods or services—for example, a farm, a mine, a factory, a store. In most instances, the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity for which an industry code is applicable.

Where a single physical location encompasses two or more distinct and separate economic activities for which different industrial classification codes seem applicable, such activities should be treated as separate establishments and classified in separate industries, provided it is determined that: (1) no one industry description in the Standard Industrial Classification includes such combined activities; (2) the employment is each such economic activity is significant; (3) such activities are not ordinarily associated with one another at common physical locations; and (4) reports can be prepared on the number of employees, their wages and salaries, and other establishment type data.

A *kind-of-activity unit* is a special type of establishment in that there is no restriction with respect to the geographic area in which the activity of the unit is carried on. The kind-of-activity unit—which applies to activities such as construction, transportation and communication—generally carries on the same kind of activity over a more or less wide geographic area. Frequently separate records relating to such activity for a given portion of the area are not maintained.

An establishment is not necessarily identical with a company or legal entity or enterprise, which may consist of one or more establishments. Also, it is to be disinguished from organizational sub-units or departments within an establishment. Supplemental interpertations of the definition of an establishment are included in the industry descriptions of the Standard Industrial Classification.

The SIC distinguishes between *central administrative and auxiliary* establishments—which are primarily engaged in providing management, general administrative, and support services for other establishments of the same company or enterprise—and *operating* establishments—which produce goods and services primarily for the general public or for establishments owned or controlled by other companies or enterprises.

Activities of the type performed at separate administrative offices and auxiliary establishments are, in fact, normally carried on as an integral part of individual operating establishments. Hence, this type of activity is only partially measured by the statistics on separately reported central administrative offices and auxiliary establishments.

(3) *Basis of classification.* Each establishment is to be classified according to its major activity as defined by the 4-digit industries. Major activity is to be determined by the product or group of products produced or handled, or service rendered. Ideally, the principal product or service should be determined by reference to "value added." In practice, however, it is rarely possible to obtain this information for individual products or services, and it becomes necessary to adopt some other criteria [2] which may be expected to give approximately the same results.

(4) *Economic significance, specialization and coverage.* To be recognized as an industry, each group of establishments must have significance from the standpoint of number of persons employed, volume of business and other economic factors, such as number of establishments, payroll, or value added. These factors are taken into account in determining the economic significance of an industry by relating the totals for the industry to the average for all industries in the same economic division (mining, manufacturing, etc.)

Generally speaking, an existing SIC industry is considered to meet the requirements for economic significance if the average of the factors represents 10 percent or more of the average industry in the same division. A new industry, however, should attain a score of 20 percent or more of the average industry. Thus, for example, based on data from the 1972 Census of Manufactures, the average manufacturing industry has (dollar figures in millions): 711 establishments; 40,000 employees; $356 payroll; $785 value added; $1,667 shipments.

Note that an exception to the principle of economic significance is found in the grouping of establishments into industries described as "not elsewhere classified."

In order that an industry at the most detailed level of classification properly reflect the activity being measured, the output of the establishments in the industry should (1) consist largely of those goods and services defining the industry and (2) account for the bulk of the specified goods and services provided by all establishments.

For manufacturing industries these factors are measured by the primary product specialization and coverage ratios, respectively.

The *primary product specialization ratio* describes the proportion of product shipments (both primary and secondary) of the industry represented by those products defining the industry. The *coverage ratio* is the proportion of the products defining the industry shipped by establishments classified in the industry to total shipments of such products by all manufacturing establishments.

The minimum ratio for primary product specialization is 82. When applying the specialization test, it is well to remember that an industry may sometimes specialize in only one product (Malt or Beet Sugar). In other instances, establishments in an industry may typically produce and thus specialize in a wide variety of products (as in Meat Packing Plants; Blast Furnaces, Steel Works, and Rolling and Finishing Mills; and Radio and Television Transmitting, Signalling, and Detection Equipment and Apparatus). For varying reasons, industries have through the years developed in a diverse manner. In such instances it is important, therefore, that the specialization ratios be applied and interpreted in the light of the typical product mix defining the particular industry.

In applying coverage ratio factors, separate criteria are established for industries with "capative" output within and outside the industry as distinguished from industries primarily producing for commerical sale. The minimum coverage ratio for industries producing for commerical sale is 70, whereas the coverage ratio for all other industries is 50, except for industries producing from purchased materials (stage of process classification). The minimum coverage ratio for this latter group of industries (e.g., Blended and Prepared Flour, etc.) is 33. The coverage ratio for industries with significant "capative" counterparts (minimum coverage of 50 per cent) should be computed on the basis of the proportion of total output (shipments for sale, interplant transfers, and production for use within the same establishment) accounted for by the given industry compared with total output in all industries. Examples of such industries are Gray Iron Foundries, Automotive Stampings, and Iron and Steel Forgings.

Separate industries for establishments primarily engaged in activities that are

[2] Other criteria include data on value of production, shipments, sales or receipts, payroll, number of employees, etc.

rapidly expanding but which do not meet the quantitative measures in the usual reference statistics also may be established. Such separate industry identification will be based on statistical evidence of current size, growth by a specified time, and on the customary requirements, other than size, for establishing new industries. Proposed industries which meet the criteria only marginally should also show reasonable recent growth or evidence of future growth.

Proposed industries should generally meet all three criteria of economic significance, specialization, and coverage. However, industries which are considerably larger in economic significance than required may be acceptable even if they are slightly low in specialization or coverage. Thus, the specialization or coverage minimum requirement may be reduced by a percentage point for each doubling in economic size of the proposed industry.

*C. Considerations in Evaluating Proposed Changes*

Proposals for new or amended industry definitions (4-digit) as well as for the transfer of existing industries to other Industry Groups (3-digit), Major Groups (2-digit), or Economic Divisions, will be evaluated on the basis of the following considerations.

(1) Proposals for change should be accompanied by detailed statistical justification of adherence to the criteria described in section B above. It is recognized that exact data will not always be available; nevertheless as much evidence as possible should be provided to justify a change. Changes that would cross 3-digit and 2-digit SIC lines require stronger justification than those that would be confined within an existing 3-digit Industry Group. Here, especially, the alteration in the size and composition of the Industry Group from which the products or services would be taken must be ascertained and the proposed revision should strengthen or clarify and not weaken the existing groups. Modifications crossing industry division lines, such as from manufacturing to nonmanufacturing, would call for even more careful consideration.

(2) In proposing new industries, it is essential to recognize the effect of the amendments on existing industries and on the continuity of statistical series. A significant weakening of a statistically sound existing industry or series would be an argument against constituting a new category. The position paper submitted by the proponent for a change must deal with the consequences on the industries affected. Each establishment is currently classifiable in some industry. The subdivision of an existing industry into two or more qualifying industries would permit the development of statistics comparable with the past and would, therefore, receive more favorable consideration. In order to permit historical comparability to the current SIC, the Technical Committee may transfer activities or industries across Group lines and maintain them within their new Group as temporary separate industries, even though they may not meet the criteria for size, specialization, or coverage. Each temporary industry will be combined with another industry in the new Group when the SIC is next revised.

(3) Proposed amendments will be evaluated on the basis of costs, in terms of time and money to government agencies, business and other users of the classification, incurred in changing current records and for collection or new data necessary for the revised code determination; and effect of change in terms of burden on respondent, or availability of information in respondent records.

(4) Proposed new industries will be evaluated on the basis of data from the most current Economic Census and other appropriated sources relevant to the criteria followed in establishing new industries.

(5) The Technical Committee will take cognizance of the International Standard Industrial Classification (ISIC) insofar as comparability with the United States establishment SIC is affected by proposed revisions.

(6) Proposed industries must contain a sufficient number of establishments so that agencies will be able to publish data within the constriction of not revealing the operations of individual producers.

(7) Consideration will be given to the capability for assessing the impact of international trade on proposed industries.

*D. Clarification and Interpretation of Industry Definitions*

Proposed amendments in present industry definitions having no effect on the scope of industrial activity included but designed to improve interpretations of the industry, as well as all proposed new index items an amendments in present index items, will be processed by the Subcommittee on Code Assignment and Interpretation.

*E. Time Schedule*

All proposed amendments to the 1972/1977 edition of the establishement *SIC Manual* should be submitted to the Chairman of the Technical Committee on Industrial Classification at the Office of Federal Statistical Policy and Standards, Department of Commerce, Washington, D.C., 20230, as soon as possible, but by no later than March 30, 1980 to permit transmittal of Technical Committee recommendations to the Office of Federal Statistical Policy and Standards by January 1, 1981. The revised edition of the classification will be effective on January 1, 1982.

*F. Public Review Procedure*

All amendments to the 1972/1977 edition of the establishement *SIC Manual* recommended by the Technical Committee will be made available for public review and comment prior to final action by the Committee. Those making proposals will be notified directly of actions taken; others will be advised through the **Federal Register.** Notice will probably be issued in January, 1981. A 60-day period will be allowed for appeals to actions proposed by the Technical Committee.

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Privacy Act of 1974; Amended Systems of Records

**AGENCY:** Office of the Secretary of Defense (OSD).

**ACTION:** Notice of amendments to systems of records.

**SUMMARY:** The Office of the Secretary of Defense proposes to alter two systems of records subject to the Privacy Act of 1974. The specific changes to the system being amended are set forth below followed by the system published in their entirety as amended.

**DATES:** These systems shall be amended as proposed without further notice on July 7, 1979, unless comments are received on or before July 7, 1979, which would result in a contrary determination and require republication for further comments.

**ADDRESS:** Any public comments, including written data, views or arguments concerning the amendments should be addressed to the System Manager identified in the particular record system concerned.

**FOR FURTHER INFORMATION CONTACT:** Mr. James S. Nash, Chief, Records Management Division, WHS, Room 5C-

315, The Pentagon, Washington, DC 20301, telephone: 202–695–0970.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense systems of records notices inventory subject to the Privacy Act of 1974 (5 U.S.C. 522a) P.L. 93–579 have been published to date in the Federal Register as follows:

FR Doc. 77–28255 (42 FR 50731) September 28, 1977
FR Doc. 78–25819 (43 FR 42375) September 20, 1978
FR Doc. 78–34821 (43 FR 58405) December 14, 1978
FR Doc. 78–35943 (43 FR 60331) December 27, 1978
FR Doc. 79–8786 (44 FR 17780) March 23, 1979
FR Doc. 79–11351 (44 FR 22143) April 13, 1979
FR Doc. 79–15267 (44 FR 28706) May 16, 1979

The proposed amendments are within the purview of the provisions of 5 U.S.C. 522a(o) of the Act which requires the submission of an altered system report which was submitted on May 18, 1979.

H. E. Lofdahl,
*Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.*
June 1, 1979.

**DWHS SPM001**

*System name:* Application for Pentagon Parking Permit (43 FR 42433, September 20, 1978)

*Changes:*

*System location:* Delete the entire entry and insert: "DoD Parking Control Office, Directorate for Space Management and Services, Washington Headquarters Services, Department of Defense, Pentagon, Washington, D.C. 20301."

*Categories of individuals covered by the system:* Delete "Office of the Secretary of Defense and those of organizations serviced by OSD", and insert: "Department of Defense".

*Categories of records in the system:* Delege the entire entry, and insert the revised entry which reads as follows: "File contains DD Form 1199, Application for Pentagon Parking Permit, and DD Form 1200, Pentagon Parking Permit Replacement/Re-Use of Space Request."

The routine uses section is revised to read as follows:

*Routine uses of records maintained in the system, including categories of users, and the purposes of such uses:* The purpose of this system is to assign Pentagon parking to eligible Department of Defense personnel.

*Internal users, uses, and purposes:* To be used by DoD Parking Control Office to assign Pentagon parking to eligible DoD personnel.

*External users, uses, and purposes:* See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices."

*Safeguards:* Delete "OSD Parking Control Officer.", and insert: "DoD Parking Control Office."

*Retention and disposal:* Delege "Office of the Secretary of Defense and satellite organizations.", and insert: "Department of Defense".

*System manager(s) and address:* Delete "Office of the Secretary of Defense", and insert: "Department of Defense".

*Notification procedure:* Delete "Office of the Secretary of Defense", and insert: "Department of Defense".

*Record access procedures:* Delete "Office of the Secretary of Defense", and insert: "Department of Defense".

**DWHS SPM00 1**

**SYSTEM NAME:**

Application for Pentagon Parking Permit.

**SYSTEM LOCATION:**

DoD Parking Control Office, Directorate for Space Management and Services, Washington Headquarters Services, Department of Defense, Pentagon, Washington, D.C. 20301.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Parking applications received from employees of the Department of Defense.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

File includes: DD Form 1199, Application for Pentagon Parking Permit, and DD Form 1200, Pentagon Parking Permit Replacement/Re-Use of Space Request.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The purpose of this system is to assign Pentagon parking to eligible Department of Defense personnel.

*Internal users, uses, and purposes:*

To be used by DoD Parking Control Office to assign pentagon parking to eligible DoD personnel.

*External users, uses, and purposes:*

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Card records in card file.

**RETRIEVABILITY:**

Filed alphabetically by last name.

**SAFEGUARDS:**

Under direct control of the DoD Parking Control Office. Office is locked and guarded.

**RETENTION AND DISPOSAL:**

Records are kept on active applicants and destroyed when they depart Department of Defense.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Space Management and Services, Washington Headquarters Services, Department of Defense, Pentagon, Washington, D.C. 20301.

**NOTIFICATION PROCEDURE:**

Information may be obtained from: Director, Space Management and Services, Washington Headquarters Services, Department of Defense, Room 3C345, Pentagon, Washington, D.C. 20301, Telephone: 202–697–7241.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed to: Director, Space Management and Services, Washington headquarters Services, Department of Defense, Room 3C345, Pentagon, Washington, D.C. 20301.

Written requests for information should contain the full name of the individual and the name of the employing component.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license or Pentagon building pass.

**CONTESTING RECORD PROCEDURES:**

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

**RECORD SOURCE CATEGORIES:**

Application for Pentagon Parking Permit, DD Form 1199, and related forms.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**DWHS SPM002**

*System name:* Pentagon Computeride (43 FR 42434, September 20, 1978)

*Changes:* Delete "Pentagon Computeride" from "*System name:*", and insert: "Pentagon Carpool Locator".

*System location:* Delete the paragraph under "Decentralized Segments", and insert: "DoD Parking Control Office, Directorate for Space Management and Services, Washington Headquarters Services, Department of Defense, Pentagon, Washington, D.C. 20301".

*Categories of individuals covered by the system:* In line one, insert the words "Department of Defense (DoD)", between the word "All" and "personnel".

The routine uses section is revised to read as follows:

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:* Immediately following this heading, add the following: "This system assigns and administers allocated carpool parking spaces at the Pentagon."

*Internal users, uses, and purposes:* DoD Parking Control Office—To assign and administer allocated carpool parking spaces at the Pentagon.

Air Force Data Services Center—To provide printout to each individual in the system which list other participants who live near him/her who are potential carpool prospects and to provide a complete printout of all participants to the DoD Parking Control Office and the General Services Administration (GSA).

Individuals—To contact other participants on either his/her individual printout or the DoD Parking Control Office's complete printout to determine their interest in carpooling.

*External users, uses, and purposes:* General Services Administration—To use carpool data in areawide system when and if implemented.

*Storage:* Delete the entry, and insert a new entry which heads as follows: "Computer magnetic tapes, disk, and paper printouts."

*Safeguards:* Delete the entry, and insert: "All participants have access to the data, which is under direct control of the DoD Parking Control Office. Office is locked and guarded. Computer media resident at the Air Force Data Services Center is stored in controlled areas. Dial-up computer terminal access is controlled by user passwords that are periodically changed."

*Retention and disposal:* Add after the first sentence: "Records of personnel removed from the Pentagon Carpool Locator shall be kept one to three months and then destroyed."

*System manager(s) and address:* Delete "Office of the Secretary of Defense", and insert: "Department of Defense".

*Notification procedure:* Delete "Office of the Secretary of Defense", and insert: "Department of Defense".

*Record access procedures:* Delete "Office of the Secretary of Defense" in paragraph one, and insert: "Department of Defense". Add the following as the fourth paragraph reads as follows: "The computer system has the facility to access all data stored in the data base. DoD Parking Control Office has exclusive access to the data base and controls updating the files."

*Record source categories:* Delete "DoD Computeride Application Form DD 1950", and insert: "Carpool Locator Card (DD Form 2170)".

**DWHS SPM002**

**SYSTEM NAME:**

Pentagon Carpool Locator.

**SYSTEM LOCATION:**

Primary System—Air Force Data Services Center

Decentralized Segments—DoD Parking Control Office, Directorate for Space Management and Services, Washington Headquarters Service, Department of Defense, Pentagon, Washington, D.C. 20301.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Department of Defense (DoD) personnel who participate in Pentagon Building carpools.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name of individual, DoD Component Code, home address, working hours, Pentagon office room number, office phone number, map coordinate of home address.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

This system assigns and administers allocated carpool parking spaces at the Pentagon.

*Internal users, uses, and purposes:*

DoD Parking Control Office—To assign and administer allocated carpool parking spaces at the Pentagon.

Air Force Data Services Center—To provide a printout to each individual in the system which lists other participants who live near him/her who are potential carpool prospects, and to provide and complete printout of all participants to the DoD Parking Control Office and the General Services Administration (GSA).

Individuals—To contact other participants on either his/her individual printout or the DoD Parking Control Office's complete printout to determine their interest in carpooling.

*External users, uses and purposes:*

General Services Administration—To use carpool data in area-wide system when and if implemented.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Computer magnetic tapes, disk and paper printouts.

**RETRIEVABILITY:**

Information is accessed and retrieved by name and home address map grid.

**SAFEGUARDS:**

All participants have access to the data, which is under direct control of the DoD Parking Control Office. Office is locked and guarded. Computer media resident at the Air Force Data Services Center is stored in controlled areas. Dial-up computer terminal access is controlled by user passwords that are periodically changed.

**RENTENTION AND DISPOSAL:**

Data is retained only on active participants. Records of personnel removed from the Pentagon Carpool Locator shall be kept one to three months and then destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Space Management and Services, Washington Headquarters Services, Department of Defense, Pentagon, Washington, D.C. 20301.

**NOTIFICATION PROCEDURE:**

Information may be obtained from: Director, Space Management and Services, Washington Headquarters Services, Department of Defense, Room 3C345, Pentagon, Washington, D.C. 20301, Telephone: 202-697-7241.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed to: Director, Space Management and Services, Washington Headquarters Services, Department of Defense, Room 3C345, Pentagon, Washington, D.C. 20301.

Written requests for information should contain the full name of the

individual, current address and telephone number.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license or Pentagon building pass.

The computer system has the facility to access all data stored in the data base. DoD Parking Control Office has exclusive access to the data base and controls updating the files.

**CONTESTING RECORD PROCEDURES:**

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

**RECORD SOURCE CATEGORIES:**

Carpool Locator Card (DD Form 2170).

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 79-17755 Filed 6-6-79; 8:45 am]

BILLING CODE 3810-70-M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Chief of Engineers Environmental Advisory Board; Open Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory committee Act (Public Law 92-463), notice is hereby given that the next meeting of the Environmental Advisory Board (EAB) of the Chief of Engineers will be held on June 28, 1979 at the Radisson Hotel, in the Grand Ballroom, 7th floor, 505 North Michigan Avenue, Chicago, Illinois 60611. All sessions of the meeting are open to the public. Time and subjects of each session follow:

A.M. Session

0800—Opening Remarks
0825—Environmental Considerations in Water Resources Planning
0900—Integration of Principles and Standards (P&S) and NEPA in the Planning Process
1000—Discussion Period

P.M. Session

1300—Corps (Civil Works) Organization for Planning Process, OCE/Division-District levels
1345—Discussion
1545—Study Management and Staff Composition
1615—Discussions
1715—Public Comments
1745—Summary of EAB meeting
1800—Adjourn

Seating in the meeting room is limited to approximately 50 persons. Written statements, to be made part of the minutes, may be submitted prior to, or up to 10 days following, the meeting, but oral participation by the public is limited because of the time schedule. Persons planning to attend or desiring further information should contact Lt Col George F. Boone, Assistant Director of Civil Works, Environmental Programs, Office of the Chief of Engineers, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20314, Telephone (202) 693-7093.

Marian G. Spittle,

*Liaison Officer with the Federal Register.*

June 4, 1979.

[FR Doc. 79-17608 Filed 6-6-79; 8:45 am]

BILLING CODE 3710-08-M

### Carolina Refining & Distributing Co.; Intent To Prepare Draft Environmental Impact Statement for Proposed Oil Refinery

Intent to prepare a Draft Environmental Impact Statement (DEIS) for a regulatory permit action involving an oil refinery proposed by Carolina Refining and Distributing Company (CRDC) in Carteret County, North Carolina, near the confluence of Newport River and the Atlantic Intracoastal Waterway (AIWW).

**LEAD AGENCY:** US Army Corps of Engineers, Wilmington District, North Carolina.

**ACTION:** Notice of Intent to Prepare a Draft Environmental Impact Statement.

**SUMMARY:** CRDC plans to process partially refined or crude oil of either foreign or domestic origin. The sources and properties of the oils to be processed have not been established at this time, but this information will be provided when available. The nominal capacity of the refinery will be approximately 30,00 barrels per day. Among the products to be produced are lead-free gasoline, jet fuel, diesel fuel, high purity coke, and elemental sulfur.

Construction of the refinery and related facilities including pipelines, offices, control laboratory, shops warehouses, fire fighting equipment, fresh water supply and effluent waste treatment facilities is expected to span approximately 12 months and to furnish employment over that period for an average workforce of about 50 persons. Operation of the refinery will require a permanent workforce of about 125 persons. The preliminary estimated cost to complete construction for the project is $92 million in 1979. David and Floyd Engineers, Inc., the applicant's consultant, intend to subcontract the design of the refinery and the types of process units to be installed.

Present plans are to deliver crude or partially refined oil to the State port in Morehead City. There is an existing oil terminal at the State Port. An additional tanker once a week and additional barge traffic are anticipated to supply the refinery. Crude oil is to be temporarily stored in tanks at the Port and transshipped to the refinery via underground/underwater pipelines. The applicant's preferred pipeline route would be north from the State Port through Crab Point Thorofare, then across Newport River to land just west of Atlantic Intracoastal Waterway (AIWW). The applicant proposes to install two 12-inch pipes and one 4-inch pipe 6 feet below bottom. An alternate pipeline route crossing the harbor eastward toward Beaufort, then turning northward on the east side of Newport River to a point opposite the plant site, and then westward across the AIWW and Core Creek was considered. Refined products are to be shipped directly from the refinery or returned to the port and shipped by tank truck, rail, pipeline, barge, or tanker.

Water for the proposed plant would be primarily from deep wells. A secondary source of water would be internal reuse of various plant process water. Approximately 1.0 million gallons per day (MGD) is to be supplied to the plant. Approximately 0.5 MGD water is to be reused and/or recycled within the facility. Treated waste (including sewage) effluent of approximately 0.75 MGD is to be discharged into Newport River. In addition, storm runoff water from the site is to be treated for grease and oils before discharge. Liquid dicharge from the refinery must be certified by the State of North Carolina and would required a National Pollutant Discharge Elimination System (NPDES) permit. Air emissions are to be controlled by application of best available control technology (BACT) a currently required by North Carolina and Environmental Protection Agency regulations.

A scoping meeting will be held to help determine issues to be addressed in the Draft Enviromental Impact Statement (DEIS) and for identifying the significant issues related to the proposed action. The meeting is scheduled as follows: 21 June 1979, 7:30 p.m., Joslyn Hall, Carteret Technical Institute, Morehead City, NC 28557.

All affected Federal, State, and local agencies, and all other interested persons or groups are encouraged to attend this meeting. Written and oral comments will be taken at the meeting

and written comments will be accepted until 2 July 1979. As a result of this meeting a scope of work will be developed for the DEIS. This scope will be made available to the public.

The merits of the applicant's proposal will not be debated at this meeting. The purpose of the meeting is to assist in developing the scope of the required EIS. The Wilmington District Corps of Engineers will conduct an exhaustive "public interest review" of this proposal which will coincide with the publication of the DEIS. Public and agency comment on the merits of the project, both verbal and written, will be received in the administrative record of the permit application at that time. It is anticipated that the DEIS should be released for review and comment in late 1979.

Representatives of several North Carolina regulatory agencies will participate in conducting the scoping meetings. In addition CRDC must recieve some 12 state authorizations prior to construction and/or operation of the proposed facility. Also the state has formed a Technical Advisory Committee, of which the Corps is a member, to assist the applicant through the permit processes.

The significant issues to be analyzed indepth in the DEIS will probably be air pollution, oil spills, impacts on endangered and threatened species, energy needs, and socioeconomic impacts.

Questions about the proposed action and DEIS can be answered by Mr. Frank Yelverton, Special Projects Manager, Regulatory Functions Branch, Wilmington District Corps of Engineers, PO Box 1890, Wilmington, North Carolina 28402, telephone (919) 343–4640, (FTS) 671–4640.

A. A. Kopcsak,

*Major, Corps of Engineers, Acting District Engineer.*

[FR Doc. 79–17623 Filed 6–6–79; 8:45 am]

BILLING CODE 3710–GN–M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

**[ERA Docket No. 56516–6081–01–77]**

### Stony Brook Phase I Project Intermediate Load Powerplant, Massachusetts Municipal Wholesale Electric Co.

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Determination to Classify the Massachusetts Municipal Wholesale Electric Company's Proposed Intermediate Load Powerplant as an "Existing" Facility.

**SUMMARY:** On April 3, 1979, the Massachusetts Municipal Wholesale Electric Company (MMWEC) submitted to the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) a request to classify its proposed Stony Brook Phase I Project intermediate load combined cycle powerplant (intermediate load powerplant) as an "existing" facility pursuant to § 515.6 of the Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Revised Interim Rule) issued on March 21, 1979 (44 FR 17464) pursuant to the provisions of the Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620 (FUA). MMWEC later submitted additional information in further support of its request.

ERA has completed it analysis of MMWEC's request and has determined that MMWEC has satisfactorily demonstrated that it would suffer a substantial financial penalty in excess of 25% of the total projected project cost as of November 9, 1978, within the meaning of § 515.6 of the Revised Interim Rule.

ERA has determined that MMWEC's intermediate load powerplant is an "existing" facility and is now subject to the provisions of Title III of FUA.

**FOR FURTHER INFORMATION CONTACT:**

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room B–110, Washington, D.C. 20461, Phone: (202) 634–2170.

Charles A. Falcone, Director, Division of Existing Facilities Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room 3128I, Washington, D.C. 20461, (202) 254–7450.

James H. Heffernan (Office of the General Counsel), Department of Energy, 12th and Pennsylvania Avenue, NW., Room 7134, Washington, D.C. 20461, (202) 633–8814.

Robert L. Davies, Deputy Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Administration, 2000 M Street, NW., Room 7202, Washington, D.C. 20461 (202) 254–3910.

**SUPPLEMENTARY INFORMATION:** (1) On November 27, 1978, MMWEC submitted a request to classify its Stony Brook Phase I Project as an "existing" facility pursuant to the Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (43 FR 54912) issued by ERA on November 22, 1978. On the basis of the materials submitted by MMWEC in November, the Stony Brook Phase I Project was then tentatively classified as a "new" facility because no major powerplant components had been delivered or installed at the site prior to November 9, 1978.

Pursuant to Section 902 of FUA, ERA proceeded to evaluate MMWEC's materials to determine whether the Stony Brook Phase I Project, consisting of two 85 MW simple cycle peakload units (Docket No. 56516–6081–01–01) and a 341 MW combined cycle unit (Docket No. 56516–6081–02–01), qualified for an exemption under Title II of FUA. On December 14, 1978, ERA issued a Tentative Decision and Order, which stated (1) the powerplants at Stony Brook were determined to be "new" facilities; (2) MMWEC did not submit evidence sufficient to justify an exemption for its intermediate load unit; and (3) the evidence submitted justified the granting of a permanent peakload exemption for its simple cycle peaking units.

On March 21, 1979, ERA issued the Revised Interim Rule substantially changing the regulations previously issued by ERA on November 22, 1978. On April 3, 1979, MMWEC filed a new request for classification under the Revised Interim Rule to have its intermediate load powerplant classified as an "existing" facility under Section 515.6 of the Revised Interim Rule applicable to substantial financial penalties. ERA has determined that MMWEC's intermediate load powerplant qualifies to be classified as an existing facility pursuant to Section 515.6 of the Revised Interim Rule. As a result, Section 2 of the Tentative Decision and Order issued by ERA on December 14, 1978, applicable to MMWEC's intermediate load unit, is hereby withdrawn.

(2) A copy of ERA's Summary of Analysis dated May 19, 1979 is available for examination in the Office of Public Information, at the above address.

Issued in Washington, D.C., June 1, 1979.

**Doris J. Dewton,**

*Acting Assisting Administrator, Office of Fuels Regulation, Economic Regulatory Administration.*

[FR Doc. 79–17681 Filed 6–6–79; 8:45 am]

BILLING CODE 6450–01–M

### Industrial Energy Conservation Program, Availability of Initial Report Form on the Use of Energy-Saving Recovered Materials

**AGENCY:** Department of Energy.

**ACTION:** Notice of availability of Report Form.

**SUMMARY:** The Department of Energy (DOE) is announcing the availability of Form CS–153, Initial Report on the Use of Energy-Saving Recovered Materials. DOE has mailed Form CS–153 to those corporations which it has identified in the **Federal Register** (44 FR 9044, February 12, 1979; 44 FR 28750, May 16, 1979) as required to report. DOE is notifying any identified corporation which has not received the form of this reporting requirement and is also notifying any other corporation which is required to report on energy consumption in SIC 22, 26, 30 or 33, pursuant to "Notice of Information Filing Requirement" (44 FR 1770, January 8, 1979), that it must respond to that notice and, if identified by DOE, will be required to file Form CS–153.

**FOR FURTHER INFORMATION CONTACT:**

Lewis S. Newman, Office of Industrial Programs, U.S. Department of Energy, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585 (202)376–4803.

Pamela Pelcovits, U.S. Department of Energy, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585 (202)376–9469.

**SUPPLEMENTARY INFORMATION:** Section 461 of the National Energy Conservation Policy Act (Pub. L. 95–619) (NECPA) adds a new section 374A to Part E of Title III of the Energy Policy and Conservation Act (42 U.S.C. 6341–6346) (EPCA). This new section directs the Department of Energy (DOE) to establish targets for the increased utilization of energy-saving recovered materials (recovered materials) in four industries—metals and metal products, paper and allied products, textile mill products and rubber. In addition, certain corporations identified by DOE in these four industries are required under section 374A(e) of the EPCA to report to DOE on their use of recovered materials, as follows: initially, on the volume of recovered materials the corporation is using in each of its manufacturing operations in the United States and any plans it has to increase such use in each of the next ten years; and thereafter annually, on the progress it has made to increase its use of recovered materials to reach the targets established by DOE for its industry.

DOE published a **Federal Register** notice on January 8, 1979 (44 FR 1770), as corrected by a **Federal Register** notice published on January 19, 1979 (44 FR 4008), which required certain manufacturing corporations to file information on their energy consumption in calendar year 1977. The information filed pursuant to that notice was used by DOE to identify corporations which consumed at least one trillion Btu's in 1977 in any of 20 major energy-consuming manufacturing industries, as required by section 372 of the EPCA. DOE published a list of identified corporations in a **Federal Register** notice published on February 12, 1979 (44 FR 9044), and published a subsequent list on May 16, 1979 (44 FR 28750).

All corporations identified by DOE in any of the following major energy-consuming industries:

| | |
|---|---|
| Primary metal industries | SIC 33 |
| Paper and allied product | SIC 26 |
| Textile mill products | SIC 22 |
| Rubber and miscellaneous plastic products | SIC 30 |

are required to file Form CS–153, Initial Report on the use of Energy-Saving Recovered Materials. Form CS–153 sets forth the procedures for preparing and transmitting to DOE the initial report on the use of recovered materials, either directly or through third parties. The information required to be reported must be received by DOE no later than July 31, 1979, regardless of whether Form CS–153 is sent directly to DOE or through third parties.

DOE has mailed Form CS–153 directly to identified corporations in these four industries. Identified corporations which have not received the form or which need additional copies may obtain them by contacting DOE at the address provided above in this notice. Moreover, any other corporation which meets the criteria for identification, as set forth in the January 8, 1979, notice, must respond to DOE, as required by that notice, and if identified by DOE in any of the four industries listed above will be required to file Form CS–153.

(Energy Policy and Conservation Act (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619); Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended; E.O. 11790 (39 FR 23185); The Department of Energy Organization Act (Pub. L. 95–91); E.O. 12009 (42 FR 46267).)

Issued in Washington, D.C. June 1, 1979.

**Maxine Savitz,**

*Deputy Assistant Secretary Conservation and Solar Applications.*

[FR Doc. 79–17654 Filed 6–6–79; 8:45 am]

**BILLING CODE 6450–01–M**

## Office of Assistant Secretary for International Affairs; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the United States of America and Switzerland and the Additional Agreement Between the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following retransfer: RTD/SD(EU)–26, from West Germany to Sweden, 11,580 kilograms Uranium, containing 411.090 kilograms U–235 (3.55%) for fabrication of fuel elements for the Beznau II power reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approval of this retransfer will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 1, 1979.

**Harold D. Bengelsdorf,**

*Director for Nuclear Affairs, International Nuclear and Technical Programs.*

[FR Doc. 79–17655 Filed 6–6–79; 8:45 am]

**BILLING CODE 6450–01–M**

## Office of Assistant Secretary for International Affairs; Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement Between the Government of the United States of America and the International Atomic Energy Agency (IAEA) for Cooperation in Peaceful Application.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract No. S–IA–101, United States to Yugoslavia, 3.3 grams normal Uranium as pitchblende ore, and 3.8 grams Thorium as monazite sand, to be used for calibrating counting equipment.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 1, 1979.

**Harold D. Bengelsdorf,**

*Director for Nuclear Affairs, International Nuclear and Technical Programs.*

[FR Doc. 79-17656 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

## National Petroleum Council, Task Groups of the Committee on Materials and Manpower Requirements; Meeting

Notice is hereby given that a task group of the Committee on Materials and Manpower Requirements will meet in June 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Materials and Manpower Requirements will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The task group scheduling a meeting is the Drilling Equipment Task Group. The time, location and agenda of the meeting follows:

The third meeting of the Drilling Equipment Task Group will be held on Thursday, June 14, 1979, starting at 8:00 a.m., 9th Floor, Armco Building, 1455 West Loop South, Houston, Texas.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.

2. Review the results of the Drilling Equipment Task Group's survey.

3. Discuss the preparation of the Drilling Equipment Task Group's report.

4. Discussion of any other matters pertinent to the overall assignment of the Drilling Equipment Task Group.

The meeting is open to the public. The chairman of the task force is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task force will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform James R. Hemphill, Office of Resource Applications, 202/633-8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on June 1, 1979.

**R. Dobie Langenkamp,**

*Deputy Assistant Secretary, Oil, Natural Gas and Shale Resources, Resource Applications.*

[FR Doc. 79-17717 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

## National Petroleum Council, Task Group of the Committee on Unconventional Gas Sources; Meeting

Notice is hereby given that three task groups of the Committee on Unconventional Gas Sources will meet in June and July 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Unconventional Gas Sources will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The task groups scheduling meetings are the Geopressured Brines Task Group, the Coal Seams Task Group, and the Tight Gas Reservoirs Task Group. The time, location and agenda of the task groups' meetings follows:

The fourth meeting of the Geopressured Brines Task Group will be held on Thursday, June 14, 1979, starting at 9:00 a.m., 9th Floor Conference Room, Union Oil Company of California, 900 Executive Plaza West, 4635 Southwest Freeway, Houston, Texas.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.

2. Discussion of report outline for the Geopressured Brines Task Group.

3. Review of preliminary results for the Geopressured Brines Task Group.

4. Review Geopressured Brines Task Group's assignments.

5. Discussion of any other matters pertinent to the overall assignment of the Geopressured Brines Task Group.

The fifth meeting of the Coal Seams Task Group will be held on Thursday, June 28, 1979, starting at 10:00 a.m., in the NPC Conference Room, 1625 K Street, NW., Washington, D.C.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.

2. Discussion of the study methodology to be employed by the Coal Seams Task Group.

3. Discussion of the timetable of the Coal Seams Task Group.

4. Discussion of any other matters pertinent to the overall assignment of the Coal Seams Task Group.

The eighth meeting of the Tight Gas Reservoir Task Group will be held on Thursday, July 26, 1979, starting at 1:00 p.m. and on Friday, July 27, 1979, starting at 8:30 a.m., in the Conference Room of Mobil Oil Corporation, Prudential Plaza Building, 1645 Curtis Street, Denver, Colorado.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.

2. Discussion of the report outline of the Tight Gas Reservoirs Task Group.

3. Review of preliminary results of the Tight Gas Reservoirs Task Group.

4. Review of the Tight Gas Reservoirs Task Group's assignments.

5. Discussion of any other matters pertinent to the overall assignment of the Tight Gas Reservoirs Task Group.

The meetings are open to the public. The chairmen of the task groups are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with any task group will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements should inform Lucio A. D'Andrea, Office of Resource Applications, 202/633-9482, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meetings will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on June 1, 1979.

**R. Dobie Langenkamp,**

*Deputy Assistant Secretary Oil, Natural Gas and Shale Resources, Resource Applications.*

[FR Doc. 79-17718 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

### National Petroleum Council, Task Group of the Committee on Unconventional Gas Sources; Meeting

Notice is hereby given that a task group of the Committee on Unconventional Gas Sources will meet in June 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Unconventional Gas Sources will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The task group scheduling a meeting is the Tight Gas Reservoirs Task Group. The time, location and agenda of the task group's meeting follows:

The seventh meeting of the Tight Gas Reservoirs Task Group, originally scheduled to meet on Friday, June 22, 1979, is hereby rescheduled for Thursday, June 21, 1979, starting at 1:00 p.m. and Friday, June 22, 1979, starting at 8:30 a.m., in the Conference Room of Mobil Oil Corporation, Prudential Plaza, 1645 Curtis Street, Denver, Colorado.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Discussion of the overall progress of the Tight Gas Reservoirs Task Group.
3. Review status of separate assignments of the Tight Gas Reservoirs Task Group.
4. Discussion of any other matters pertinent to the overall assignment of the Tight Gas Reservoirs Task Group.

The meeting is open to the public. The chairman of the task group is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lucio A. D'Andrea, Office of Resource Applications, 202/633–9482, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on June 1, 1979.

**R. Dobie Langenkamp,**

*Deputy Assistant Secretary, Oil, Natural Gas and Shale Resources, Resource Applications.*

[FR Doc. 79-17719 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

### National Petroleum Council, Task Group of the Committee on Unconventional Gas Sources; Meeting

Notice is hereby given that a subcommittee of the Committee on Unconventional Gas Sources will meet in June 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Unconventional Gas Sources will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The subcommittee scheduling a meeting is the Coordinating Subcommittee. The time, location and agenda of the subcommittee meeting follows:

The second meeting of the Coordinating Subcommittee will be held on Wednesday, June 20, 1979, starting at 9:00 a.m., 44th Floor Conference Room, Shell Oil Company, One Shell Plaza, Houston, Texas.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Review the progress of the Task Groups.
3. Discussion of the preparation of the Coordinating Subcommittee's report draft.
4. Discussion of the timetable of the Coordinating Subcommittee.
5. Discussion of any other matters pertinent to the overall assignment of the Coordinating Subcommittee.

The meeting is open to the public. The chairman of the subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lucio A. D'Andrea, Office of Resource Applications, 202/633–9482, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on June 1, 1979.

**R. Dobie Langenkamp,**

*Deputy Assistant Secretary, Oil, Natural Gas and Shale Resources, Resource Applications.*

[FR Doc. 79-17720 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

## Office of Energy Technology

### Fossil Energy Advisory Committee Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given that the Fossil Energy Advisory Committee will meet Tuesday, June 26, 1979, at 8:00 a.m., at the Sheraton Inn Airport Hotel, Conference Room B–4, 1160 Thorn Run Road Extension, Coraopolis, Pennsylvania.

The purpose of the committee is to provide the Department of Energy with advice in developing through research, new and more efficient methods of mining, preparing and utilizing coal.

The tentative agenda is as follows:

8:00 a.m.—Opening Remarks—Dr. William E. Shoupp, Fossil Energy Advisory Committee (FEAC).
8:15 a.m.—Introduction and Welcoming Remarks—Mr. George Fumich, Jr., Program Director for Fossil Energy.
8:30 a.m.—DOE Underground Coal Mining R&D Program—Mr. William B. Schmidt, Fossil Fuel Extraction.
9:15 a.m.—FEAC Question and Answer Period on DOE Underground Coal Mining R&D Program.
9:45 a.m.—Break.
10:00 a.m.—DOE Surface Coal Mining R&D Program—Mr. Douglas B. Uthus, Fossil Fuel Extraction.
10:20 a.m.—FEAC Question and Answer Period on DOE Surface Coal Mining R&D Program.
10:45 a.m.—Coal Mining, Environmental and Health and Safety R&D Program—Mr. John Murphy, Research Director, Pittsburgh Mining and Safety Research Center, Bureau of Mines (BOM).
11:30 a.m.—FEAC Question and Answer Period on BOM Coal Mining, Environmental and Health and Safety R&D Program.
12:00 noon—Lunch.

1:15 p.m.—MSHA Coal Mining Health and Safety Regulatory Program—Mr. Donald W. Huntley, District Manager, Pittsburgh Coal Mining Safety and Health Administration, Bureau of Mines.
2:00 p.m.—FEAC Question and Answer Period on MSHA Coal Mining Health and Safety Regulatory Program.
2:30 p.m.—An Overview of Industrial Aspects of the National Coal Program:
(Chairman)—Mr. Eric H. Reichl, FEAC Member.
(Guest Speaker)—Mr. William N. Poundstone, Executive Vice President; Consolidation Coal Company.
(Guest Speaker)—Mr. Joe Yancik, Vice President, National Coal Association.
(Guest Speaker)—Dr. Charles C. Potter, Chairman, Rochester and Pittsburgh Coal Company.
4:05 p.m.—FEAC Discussion on Agenda Topics:
(Chairman)—Dr. George R. Hill, FEAC Member.
5:00 p.m.—Public Comment (10 minute rule).

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should call the Advisory Committee Management Office (202) 252–5187, at least 5 days prior to the meeting and reasonable provision will be made to include their presentation on the agenda.

Transcripts of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA–152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter. An Executive Summary of the meeting may be obtained by calling the Advisory Committee Management Office at the above number.

Issued at Washington, D.C., on June 4, 1979.

**Georgia Hildreth,**

*Director, Advisory Committee Management.*

[FR Doc. 79–17721 Filed 6–6–79; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket No. ER79–388]**

### Central Hudson Gas & Electric Corp.; Rate Filing

June 1, 1979.

The filing Company submits the following:

Take notice that on May 29, 1979, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing its development of actual costs for 1978 related to transmission service provided from the Roseton Generating Plant to Consolidated Edison Company of New York, Inc. (Con Edison) and Niagara Mohawk Power Corporation (Niagara Mohawk) in accordance with the provisions of its Rate Schedule F.E.R.C. No. 42.

The actual costs for 1978 amounted to $1.1105 per Mw-day to Con Edison and $3.8030 per Mw-day to Niagara Mohawk and are the basis on which estimated charges for 1979 will be billed.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit charges to become effective January 1, 1979 as agreed by the parties.

Central Hudson states that a copy of its filing was served on Con Edison, Niagara Mohawk and the State of New York Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 in accordance with 18 CFR 1.8, 1.10. All such petitions or protests should be filed on or before June 22, 1979. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 79–17660 Filed 6–6–79; 8:45 am]

BILLING CODE 6450–01–M

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### Cumberland Oil Producing Co., Inc. et al.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 31, 1979.

On May 16, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act 1978.

**State of Tennessee, State Oil and Gas Board**

FERC Control Number: JD79–5754
API Well Number: 41–129–20091
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #2 (Harrison)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 15 MMcf.

FERC Control Number: JD79–5755
API Well Number: 41–129–20104
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: M. Branstetter #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79–5756
API Well Number: 41–129–20120
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: E. Howard #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 16 MMcf.

FERC Control Number: JD79–5757
API Well Number: 41–129–20131
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #3 (Harrison)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 15 MMcf.

FERC Control Number: JD79–5758
API Well Number: 41–129–20314
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: G. Barnet #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 6 MMcf.

FERC Control Number: JD79–5759
API Well Number: 41–129–10039
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: J. Bye #2
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.5 MMcf.

FERC Control Number: JD79–5760
API Well Number: 41–129–20378
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: C. Potter et al Unit #1
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 6 MMcf.

FERC Control Number: JD79–5761
API Well Number: 41–129–20290
Section of NGPA: 108

Operator: Cumberland Oil Producing Co., Inc.
Well Name: W. W. Ivey #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.5 MMcf.

FERC Control Number: JD79–5762
API Well Number: 41–129–10034
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: S. Luchin #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.5 MMcf.

FERC Control Number: JD79–5763
API Well Number: 41–129–20316
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: F. Susak #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 7 MMcf.

FERC Control Number: JD79–5764
API Well Number: 41–129–10033
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: A. Bigoness et al Unit #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 3 MMcf.

FERC Control Number: JD79–5765
API Well Number: 41–129–20077
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #3 (Jack Markham)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79–5766
API Well Number: 41–129–10035
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: S. Luchin #2
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 3 MMcf.

FERC Control Number: JD79–5767
API Well Number: 41–129–20089
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: L. Duncan #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 7 MMcf.

FERC Control Number: JD79–5768
API Well Number: 41–129–10038
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: O. Cole #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.1 MMcf.

FERC Control Number: JD79–5769
API Well Number: 41–129–10041
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: J. D. Mize #1
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 7 MMcf.

FERC Control Number: JD79–5770
API Well Number: 41–129–00084
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: J. Bye #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 0.5 MMcf.

FERC Control Number: JD79–5771
API Well Number: 41–129–10043
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #2A (Markham)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79–5772
API Well Number: 41–129–10042
Section of NGPA: 108
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #2 (MARGAM)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79–5773
API Well Number: N/A
Section of NGPA: 108
Operator: Universal Land and Mineral Co.
Well Name: David Summer #2—Permit #1652
Field: Sunbright Gas Field
County:
Purchaser: Intrastate Energy Corp.
Volume: 36 MMcf.

FERC Control Number: JD79–5774
API Well Number: 41–129–20128
Section of NGPA: 108
Operator: Universal Land & Mineral Leasing Co.
Well Name: William Summer #1 Permit #797
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Corp.
Volume: 72 MMcf.

FERC Control Number: JD79–5775
API Well Number: N/A
Section of NGPA: 108
Operator: Universal Land & Mineral Co.
Well Name: William Summer #2 Permit #1244
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Corp.
Volume: 36 MMcf.

FERC Control Number: JD79–5776
API Well Number: N/A
Section of NGPA: 108
Operator: Universal Land & Mineral Co.
Well Name: David Summer #1 Permit #1292
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Corp.
Volume: 36 MMcf.

FERC Control Number: JD79–5777
API Well Number: N/A
Section of NGPA: 108
Operator: Universal Land & Mineral Co.
Well Name: String Field #1 Permit #1083
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Corp.
Volume: 29 MMcf.

FERC Control Number: JD79–5778
API Well Number: N/A
Section of NGPA: 108
Operator: Universal Land & Mineral Co.
Well Name: David Summer #3 Permit #1927
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Co.
Volume: 36 MMcf.

FERC Control Number: JD79–5779
API Well Number: N/A
Section of NGPA: 102
Operator: Universal Land & Mineral Co.
Well Name: Jones #1
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Corp.
Volume: N/A.

FERC Control Number: JD79–5780
API Well Number: N/A
Section of NGPA: 102
Operator: Universal Land & Mineral Co.
Well Name: William Summer #1 Permit #797
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Corp.
Volume: N/A.

FERC Control Number: JD79–5781
API Well Number: N/A
Section of NGPA: 102
Operator: Universal Land & Mineral Co.
Well Name: William Summer #2 Permit #1244
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Corp.
Volume: N/A.

FERC Control Number: JD79–5782
API Well Number: N/A
Section of NGPA: 102
Operator: Universal Land & Mineral Co.
Well Name: String Field #1 Permit #1083
Field: Sunbright Gas Field
County: Morgan
Purchaser: Intrastate Energy Corp.
Volume: N/A.

FERC Control Number: JD79–5783
API Well Number: 41–151–20360
Section of NGPA: 102
Operator: Low Gap-Reuben Hollow
Well Name: Brimstone-Newport #1
Field:
County: Scott
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79–5784
API Well Number: 41–151–20356
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Sexton et al #1
Field: N/A
County: Scott
Purchaser: Intrastate Energy Corp.
Volume: 40 MMcf.

FERC Control Number: JD79-5785
API Well Number: 41-151-20356
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone-Brimstone #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5786
API Well Number: 41-151-20271
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Duncan-Brummett #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: Monteagle-Ft. Payne
Volume: N/A.

FERC Control Number: JD79-5787
API Well Number: 41-151-20239
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Criscillis Bowling Walker #1
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5788
API Well Number: 41-151-20226
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone Company #5
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5789
API Well Number: 41-51-20222
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone Company #4
Field: N/A
County:
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5790
API Well Number: 41-151-20288
Section of NGPA: 102
Operator: Dixie Oil Company.
Well Name: Brimstone #6
Field: Low Gap-Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5791
API Well Number: 41-151-20351
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone Company #8
Field: Low Gap-Reuben Hollow
County: N/A
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5792
API Well Number: 41-151-20305
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brummett-Brimstone #1
Field: Low Gap Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5793
API Well Number: 41-151-20313
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone-Brummett-Wilson #1
Field: Low Gap Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5794
API Well Number: 41-151-20280
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brummett-Duncan-Brimstone #1
Field: Low Gap Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5795
API Well Number: 41-151-20296
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brummett-Duncan-Brimstone
Field: Low Gap Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A.

FERC Control Number: JD79-5796
API Well Number: 41-151-20301
Section of NGPA: 102
Operator: Dixie Oil Company
Well Name: Brimstone #7
Field: Low Gap Reuben Hollow
County: Scott
Purchaser: N/A
Volume: N/A

FERC Control Number: JD79-5797
API Well Number: 41-129-20374
Section of NGPA: 102
Operator: Cumberland Oil Producing Co. Inc.
Well Name: R. Aytes et al Unit #1
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 26 MMcf.

FERC Control Number: JD79-5798
API Well Number: 41-129-20391
Section of NGPA: 102
Operator: Cumberland Oil Producing Co. Inc.
Well Name: T. Lavender et al Unit #1
Field: Unnamed
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 11 MMcf.

FERC Control Number: JD79-5799
API Well Number: 41-129-20394
Section of NGPA: 102
Operator: Cumberland Oil Producing Co. Inc.
Well Name: D. Branstetter et al Unit #1
Field: Unnamed
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 25 MMcf.

FERC Control Number: JD79-5800
API Well Number: 41-129-20314
Section of NGPA: 102
Operator: Cumberland Oil Producing Co. Inc.
Well Name: G. Barnett #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 6 MMcf.

FERC Control Number: JD79-5801
API Well Number: 41-129-20339
Section of NGPA: 102
Operator: Cumberland Oil Producing Co. Inc.
Well Name:
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 15 MMcf.

FERC Control Number: JD79-5802
API Well Number: 41-129-20329
Section of NGPA: 102
Operator: Cumberland Oil Company
Well Name: B. Woolum #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 15 MMcf.

FERC Control Number: JD79-5803
API Well Number: 41-129-20312
Section of NGPA: 102
Operator: Cumberland Oil Producing Co. Inc.
Well Name: C. Zeigler #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 12 MMcf.

FERC Control Number: JD79-5804
API Well Number: 41-129-20340
Section of NGPA: 102
Operator: Cumberland Oil Producing Company, Inc.
Well Name: J. Dobies #1
Field: Douglas Branch
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79-5805
API Well Number: 41-129-10043
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Plateau Properties #2A (Markham)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79-5806
API Well Number: 41-129-10042
Section of NGPA: 102
Operator: Cumberland Oil Co., Inc.
Well Name: Plateau Properties #2 (Markham)
Field: Frankfort NE
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 10 MMcf.

FERC Control Number: JD79-5807
API Well Number: 41-129-20294
Section of NGPA: 102
Operator: Cumberland Oil Producing Co., Inc.
Well Name: Needham et al Unit #1
Field: Unnamed
County: Morgan
Purchaser: East Tennessee Natural Gas Co.
Volume: 36 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825

North Capitol Street, NE., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 22, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 79-17663 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

### Michel T. Halbouty; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 31, 1979.

On May 2, 1979, the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

**Railroad Commission of Texas**

FERC Control Number: JD79-6298
API Well Number: NA
Section: 103
Operator: Michel T. Halbouty
Well Name: Rocker "B" Lse. #7
Field: Sprayberry (Trend Area)
County: Reagan
Purchaser: El Paso Natural Gas Co.
Volume: 13 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E. Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 22, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 79-17662 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

**[Docket No. RP78-68]**

### United Gas Pipe Line Co., Rescheduling Conference

June 1, 1979.

The informal settlement conference scheduled to be held in this proceeding on June 7, 1979, has been rescheduled for June 11, 1979, at 1:30 P.M., in Room 3200, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene by order of the Commission, attendance will not be deemed to authorize intervention as a party in these proceedings.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 79-17661 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

### Advisory Committee on Revision of Rules of Practice and Procedure, Subcommittee on Ex Parte and Separation of Functions; Meeting

June 5, 1979.

Pursuant to the Provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the subcommittee on *Ex Parte* and Separation of Functions of the Advisory Committee on Revision of Rules of Practice and Procedure will meet on Friday, June 8, 1979 from 2 p.m. to 5 p.m., at the Federal Energy Regulatory Commission, 825 N. Capitol St., N.E., Hearing Room A, Washington, D.C.

The Subcommittee on *Ex Parte* and Separation of Functions had anticipated that it would report to the full Advisory Committee on the Rules of Practice and Procedure on its recommendations concerning *Ex Parte* and separation of functions matters at a meeting of the Full Advisory Committee scheduled for Friday, June 8, 1979 at 2 p.m. However, the Subcommitteee on *Ex Parte* and Separation of Functions, at its meeting of June 1, 1979, determined it needed to further consider its business. Accordingly, the meeting of the Full Advisory Committee scheduled for June 8 at 2 p.m. is cancelled, and the Subcommittee on *Ex Parte* and Separation of Functions will meet at 2 p.m. on Friday, June 8, 1979 to continue preparation of the recommendations respecting revision of the Commission's *Ex Parte* and separation of functions regulations.

The meeting is open to the public. A transcript of the meeting will be available for public review and copying at FERC's Division of Public Information, Room 1000, 825 N. Capitol St., N.E., between the hours of 8:00 a.m. and 5:30 p.m. Monday through Friday except Federal holidays. In addition, any person may purchase a copy of the transcript from the reporter.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 79-17748 Filed 6-6-79; 8:45 am]

BILLING CODE 6450-01-M

### Office of Energy Conservation and Solar Applications; Meeting Regarding Emergency Building Temperature Restrictions Program

Notice is hereby given that the Department of Energy (DOE) will hold a meeting with the National Association of Counties on Friday, June 8, 1979, at 9:00 a.m. in the 5th Floor Conference Room, 1735 New York Avenue, N.W., Washington, D.C.

The purpose of the meeting will be to discuss the role of the counties in implementing the Emergency Building Temperature Restrictions Program. This program is authorized by the President's "Standby Conservation Plan No. 2: Emergency Building Temperature Restrictions," which recently was approved by the Congress.

Issued in Washington, D.C., on June 5, 1979.

**Maxine Savitz,**

*Deputy Assistant Secretary, Conservation and Solar Applications.*

[FR Doc. 79-17823 Filed 6-5-79; 1:40 pm]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL 1242-2; OPP-C30134A]**

### Pesticide Programs; Approval of Application to Conditionally Register Pesticide Product Containing New Active Ingredient

On June 24, 1977, notice was given (42 FR 32294) that Dow Chemical Co., P.O. Box 1706, Midland, MI 48640, had filed an application (EPA File Symbol 464-LUA) with the Environmental Protection Agency (EPA) to register the pesticide product GARLON 3A HERBICIDE containing 44.4% of the active ingredient triclopyr (3,5,6-trichloro-2-pyridinyloxyacetic acid), as the triethylamine salt, which was not previously registered at the time of submission. Notice of registration is given in accordance with 40 CFR 162.7(d)(2).

This application was conditionally approved May 9, 1979 and the product has been assigned the EPA Registration No. 464-546. GARLON 3A HERBICIDE is classified for general use in the control of woody plants and broadleaf weeds on rights-of-way and industrial sites and

for use in forest site preparation. A copy of the approved label and list of data references used to support registration are available for public inspection in the office of the Federal Register Section, Program Support Division (TS–757), Office of Pesticide Programs, Rm. 401 East Tower, 401 M St., SW., Washington, DC 20460. The data and other information used to support registration, except for the material specifically protected by Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136) will be available for public inspection in accordance with section 3(c)(2) of FIFRA, within 30 days after the registration date of May 9, 1979. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), EPA, 401 M St., SW, Washington, DC 20460. Such requests should: 1) identify the product by name and registration number and 2) specify the data or information desired.

Dated: June 1, 1979.

**Edwin L. Johson,**

*Deputy Assistant Administrator for Pesticide Programs.*

[FR Doc. 79–17736 Filed 6–6–79; 8:45 am]

BILLING CODE 6560–01–M

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[FRL 1241–5; OPP–30000/12C]

## Intent To Conditionally Register a Pesticide Produce Containing Amitraz for Use on Pears

**AGENCY:** Office of Pesticide Programs, Environmental Protection Agency (EPA).

**ACTION:** Notice of Intent to Conditionally Register a Pesticide product Containing Amitraz for Use on Pears and to Not Grant Registration of this Product for Use on Apples; Notice of Availability of Position Document 4.

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**FOR FURTHER INFORMATION CONTACT:** Jeff Kempter, Project Manager, Special Pesticide Review Division, Office of Pesticide Programs (TS–791), EPA, Washington, D.C. 20460 (703/557–7986).

**SUPPLEMENTARY INFORMATION:** On July 23, 1976, the Environmental Protection Agency (EPA) received an application for registration of a pesticide product (BAAM EC) containing amitraz for use on apples and pears. On April 6, 1977, EPA published in the **Federal Register** (42 FR 18299), a notice of rebuttable presumption against registration (RPAR) of amitraz based on its determination that amitraz and a metabolite of amitraz had induced cancer in laboratory animals. After issuance of the RPAR, the Agency considered comments submitted by applicant for registration and other persons for the purpose of rebutting the presumption or demonstrating possible benefits of amitraz. The Agency also received and considered comments from the U.S. Department of Agriculture (USDA) on the possible benefits of amitraz.

After reviewing all the submitted information and considering the requirements for full registration under Section 3(c)(5) of FIFRA and for conditional registration of pesticides containing unregistered active ingredients under Section 3(c)(7)(C), the Agency determined that it would conditionally register amitraz for use on pears and would not register that pesticide for use on apples. Notice of this determination was published in the **Federal Register** on January 12, 1979 (44 FR 2678–2682). That notice, Amitraz Position Document 3, which detailed the Agency's reasons for its determination, and other documents referenced in the Position Document were sent to the FIFRA Scientific Advisory Panel (SAP) and USDA for comment. EPA has received comments from SAP and USDA, as well as from the applicant for registration and other interested persons on its January 12, 1979 Notice of Determination.

After considering all these comments, the Agency has concluded the following with respect to risks and benefits: (1) there is weakly positive evidence that amitraz is a potential human carcinogen; (2) use of amitraz on pears and apples for a short period of time would pose a very small risk of cancer to applicators, bystanders, and the general U.S. population; (3) a bioassay of the carcinogenicity of amitraz on mice submitted by the applicant suffers from deficiencies which make it unreliable for purposes of estimating the risks resulting from exposure to amitraz over a long period of time; (4) use of amitraz on pears may result in significant benefits; and (5) use of amitraz on apples would result in insignificant or speculative benefits.

The Agency has made the following decisions on the pending application for registration of amitraz:

1. The bioassay for carcinogenicity of amitraz in mice does not satisfy the data requirements for full registration under Section 3(c)(5). Therefore, the Agency cannot consider granting full registration for use of amitraz on either apples or pears until another bioassay has been conducted.

2. The Agency cannot grant conditional registration of amitraz for use on apples because the requirements of Section 3(c)(7)(C) of FIFRA have not been met. That section permits conditional registration of pesticide products containing unregistered active ingredients only if such registration would not cause any unreasonable adverse effects and would be in the public interest. Because use of amitraz on apples would result in a small carcinogenic risk to people and insignificant benefits, the Agency concludes that such use would cause unreasonable adverse effects and would not be in the public interest.

3. The Agency will conditionally register amitraz for restricted use on pears for four years under Section 3(c)(7)(C) of FIFRA. The Agency has concluded that such registration would not cause any unreasonable adverse effects and would be in the public interest because it would result in substantial benefits and very small risks.

This registration will be subject to certain terms and conditions. Label directions will specify that only certified applicators may spray amitraz, and will also require a 7-day preharvest interval, protective clothing for applicators, and a prohibition against reentry until the treated leaves are dry and in any event until 24 hours after application. Also, additional benefits data and another mouse oncogenic bioassay must be submitted within 4 years, with annual reports of progress and test results. If the registrant does not meet these stipulations, the conditional registration may be cancelled.

The Agency will issue a conditional registration of amitraz for use on pears after the applicant agrees in writing to the conditions and terms specified in this document and agrees to satisfy all of the Agency's data requirements.

Position Document 4 (PD 4) follows this Notice of Intent to Conditionally Register Pesticide Products Containing Amitraz for Use on Pears. It explains in detail the Agency's analysis of the comments submitted by the USDA, SAP, and other interested parties regarding Position Document 3 (PD 3). Appendix A of PD 4 contains the SAP and USDA comments in their entirety. PD 3 sets forth the Agency's reasons and factual bases for the regulatory actions proposed in the January 12, 1979, Notice of Determination. PD 3 and PD 4 provide the reasons and factual bases for the decisions and regulatory actions initiated in today's notice.

Dated: June 4, 1979.

**Steven D. Jellinek,**

*Assistant Administrator for Toxic Substances.*

[FR Doc. 79-17731 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

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**[FRL 1241-6; PF-130]**

## Pesticide Programs; Filing of Pesticide/Food Additive Petitions

Pursuant to sections 408(d)(1) and 409(b)(5) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) gives notice that the following petitions have been submitted to the Agency for consideration.

PP 9F2198. BASF Wyandotte Corp., 100 Cherry Hill Rd., PO Box 181, Parsippany, NJ 07054. Proposes that 40 CFR 180.363 be amended by establishing tolerances for residues of the herbicide fluchloralin [*N*-(2-chloroethyl)-a,a,a-trifluoro-2,6-dinitro-*N*-propyl-p-toluidine] in or on the raw agricultural commodities peanuts and peanut hay at 0.05 part per million (ppm), and peanut hulls at 0.1 ppm. The proposed analytical method for determining residues is by gas chromatography using an electron capture detector. PM25—Mr. Robert Taylor, 202/755-2196.

FAP 9H5216. Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804. Proposes that 21 CFR 193.10 be amended by establishing a regulation outlining the safe use of the insecticide acephate (*O,S*-dimethyl acetylphosphoramidothioate) with the following prescribed conditions.

(a) Application shall be limited solely to spot and/or crack and crevice treatment in food handling establishments where food and food products are held, processed, prepared or served. Spray concentration shall be limited to a maximum of 1.0% active ingredient. For crack and crevice treatments, equipment capable of delivering a pin-stream of insecticide shall be used. For spot treatments, a coarse, low-pressure spray shall be used to avoid atomization or splashing of the spray. Contamination of food-contact surfaces shall be avoided.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling. PM16—Mr. William Miller, 202/755-9315.

Interested persons are invited to submit written comments on these petitions to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Rm. 401, East Tower, 401 M St., SW., Washington, DC 20460. Inquiries concerning these petitions may be directed to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, at the above address, or by telephone at the numbers cited. Written comments should bear a notation indicating the petition number to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: May 29, 1979.

**Douglas D. Campt,**

*Director, Registration Division.*

[FR Doc. 79-17732 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

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**[FRL 1241-7; PF-132]**

## Pesticide Programs; Filing of Pesticide Petitions

Pursuant to section 408(d)(1) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) gives notice that the following petitions have been submitted to the Agency for consideration.

PP 9F2190. Sandoz, Inc., 480 Camino del Rio South, Suite 204, San Diego, CA 92108. Proposes that 40 CFR 180.356 be amended by establishing tolerances for the combined residues of the herbicide norflurazon [4-chloro-5-(methylamino)-2-(a,a,a-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone] and its desmethyl metabolite [4-chloro-5-amino-2-(a,a,a-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone] in or on the raw agricultural commodities peanuts at 0.6 part per million (ppm); soybeans at 0.5 ppm; soybean seed, peanut seed, and peanut shells at 0.2 ppm. The proposed analytical method for determining residues is by gas chromatographic analysis method. PM23–Ms Willa Garner, 202/755–1397.

PP 9F2197. Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105. Proposes that 40 CFR 180 be amended by establishing tolerances for the residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-trifluoro-methyl) benzene] in or on the raw agricultural commodities almonds, stone fruits, and grapes at 0.05 ppm and almond hulls at 0.10 ppm. The proposed analytical method for determining residues is by gas-liquid chromatographic procedure using an electron capture device. PM25–Mr. Robert Taylor, 202/755–2196.

PP 9F2203. Ciba-Geigy Corp., PO Box 11422, Greensboro, NC 27409. Proposes that 40 CFR 180.368 be amended by establishing tolerance for the combined residues of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl) acetamide] and its metabolites determined as (2-[2-ethyl-6-methylphenyl) amino]-1-propanol] and (4-[2-ethyl-6-methylphenyl]-2-hydroxy-5-methyl-3-morpholinone), each expressed as parent metolachlor, in or on the raw agricultural commodity potatoes at 0.1 ppm. The proposed analytical method for determining residues is by gas chromatography with a Coulson N2 detector. PM23.

Interested persons are invited to submit written comments on these petitions to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Rm. 401, East Tower, 401 M St., SW, Washington, DC 20460. Inquiries concerning these petitions may be directed to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, at the above address, or by telephone at the numbers cited. Written comments should bear a notation indicating the petition number to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: May 29, 1979.

**Douglas D. Campt,**

*Director, Registration Division.*

[FR Doc. 79-17733 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

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**[FRL 1242-1; PF-131]**

## Pesticide Programs; Filing of Pesticide/Food/Feed Additive Petitions

Pursuant to sections 408(d)(1) and 409(b)(5) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) gives notice that the following petitions have been submitted to the Agency for consideration.

PP 9F2192. ICI Americas Inc., Concord Pike and New Murphy Road, Wilmington, DE 19897. Proposes that 40 CFR 180.378 be amended by establishing tolerances for residues of the insecticide permethrin [(3-phenoxyphenyl)-methyl

(±)-cis, trans-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] in or on the raw agricultural commodities lettuce and cabbage at 1.0 part per million (ppm). The proposed analytical method for determining residues is by gas-liquid chromatography procedure using an electron capture detector. PM17-Franklin Gee, (202/426-9425).

FAP 9H5212. ICI Americas Inc. Proposes that 21 CFR 561 be amended by permitting residues of the insecticide permethrin in or on the feed commodities lettuce and cabbage refuse at 50 ppm. PM17.

PP 9F2195. Zoecon Corp., 975 California Ave., Palo Alto, CA 94304. Proposes that 40 CFR 180.359 be amended by establishing a tolerance for residues of the insert growth regulator methoprene [isopropyl (*E,E*)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate] in or on the raw agricultural commodity mushrooms at 3.0 ppm. The proposed analytical method for determining residues is by gas-liquid chromatography with flame ionization detector. PM17.

PP 9F2196. FMC Corp., 2000 Market St., Philadelphia, PA 19103. Proposes that 40 CFR 180.378 be amended by establishing tolerances for residues of the insecticide permethrin in or on the raw agricultural commodities soybeans, poultry, and eggs at 0.05 ppm. The proposed analytical method for determining residues is by gas chromatography with electron capture detector. PM17.

FAP 9H5215. FMC Corp. Proposes that 21 CFR 193 be amended by permitting residues of the insecticide permethrin in or on the food commodity soybean oil at 0.2 ppm. PM17.

FAP 9H5215. FMC Corp. Proposes that 21 CFR 561 be amended by permitting residues of the insecticide permethrin in or on the feed commodity soybean hulls at 0.5 ppm. PM17.

PP 9F2201. Union Carbide Corp., 2001 Jefferson Davis Highway, Suite 401, Arlington, VA 22202. Proposes that 40 CFR 180.269 be amended by establishing tolerances for the combined residues of the nematocide aldicarb [2-methyl-2-(methylthio) propionaldehyde *O*-(methyl-carbamoyl)oxime] and its cholinesterase-inhibiting metabolites 2-methyl-2-(methylsulfinyl) propionaldehyde *O*-(methylcarbamoyl)oxime and 2-methyl-2-(methylsulfonyl) propionaldehyde *O*-(methylcarbamoyl)oxime in or on the raw agricultural commodities citrus (grapefruits, lemons, and limes) at 0.3 ppm. The proposed analytical method for determining residues is by gas chromatography utilizing a flame photometric detector specific for sulfur-containing compounds. PM12—Mr. Frank Sanders, (202/426-9425).

FAP 9H5218. Union Carbide Corp. Proposes that 21 CFR 561.30 be amended by permitting residues of the nematocide aldicarb in or on the animal feed citrus pulp at 0.6 ppm. PM12.

Interested persons are invited to submit written comments on these petitions to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Rm. E-401, 401 M St., SW, Washington, DC 20460. Inquiries concerning these petitions may be directed to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Program, at the above address, or by telephone at the numbers cited. Written comments should bear a notiation indicating the petition number to which comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: June 4, 1979.

**Douglas D. Campt,**

*Director, Registration Division.*

[FR Doc. 79-17735 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

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[FRL 1241-8; OPP-C31029]

## Pesticide Programs; Receipt of Application to Conditionally Register Pesticide Product Entailing a Changed Use Pattern

Zoecon Corp., 975 California Ave., Palo Alto, CA 94304, has submitted to the Enironmental Protection Agency (EPA) an application to conditionally register the product KABAT TOBACCO PROTECTOR (EPA File Symbol 20954-RL) containing 5.0% of the active ingredient methoprene [isopropyl (*E,E*)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate]. The application received from Zoecon Corp. proposes that the use pattern of this pesticide be changed to include use on stored tobacco to control cigarette beetle. The application also proposes that the product be classified for general use.

Notice of receipt of this application does not indicate a decision by the Agency on the application. Interested persons are invited to submit written comments on this application to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Rm. EB-47, 401 M St., SW, Washington, DC 20460. The comments must be received within 30 days from the date of publication of this notice in the **Federal Register** and should bear a notation indicating the EPA File Symbol "20954-RL". Comments received within the specified time period will be considered before a final decision is made; comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. Specific questions concerning this application and the data submitted should be directed to Product Manager (PM) 17, Mr. Franklin Gee, Registration Division (TS-767), Office of Pesticide Programs, at the above address or by telephone at 202/426-9425. The label furnished by Zoecon Corp., as well as all written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Notice of approval or denial of this application to register KABAT TOBACCO PROTECTOR will be announced in the **Federal Register**. Except for such material protected by Section 10 of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136), the test data and other information submitted in support of registration as well as other scientific information deemed relevant to the registration decision may be made available after approval under the provision of the Freedom of Information Act. The procedures for requesting such data will be given in the **Federal Register** if an application is approved.

Dated: June 4, 1979.

**Douglas D. Campt,**

*Director, Registration Division.*

[FR Doc. 79-17734 Filed 6-6-9; 8:45 am]

BILLING CODE 6560-01-M

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[FRL 1241-2]

## Summit County, Ohio, Nonattainment Designation; Additional Information

**ACTION:** Request for public comments.

**SUMMARY:** The Environmental Protection Agency (EPA) requests comments on additional information which supports EPA's designation of a portion of Summit County as an area which has not attained the national ambient air quality standards (NAAQS) for sulfur dioxide. The additional information consists of monitoring data collected and submitted to EPA by industry in Akron, Ohio. EPA's designation,

published October 5, 1978 (43 FR 45993), was based on air quality dispersion modeling. The monitoring data confirms that designation.

**DATE:** Comments should be submitted by June 22, 1979.

**ADDRESSES:** Send Comments to: Debra Costello, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Data is available for inspection at the above address during normal working hours.

**SUPPLEMENTARY INFORMATION:** On March 3, 1978 the Administrator of EPA published a list of nonattainment areas for the nation pursuant to Section 107 of the Clean Air Act. 43 FR 8962. Following a sixty-day comment period, the Administrator repromulgated the designations list with modifications based on comments. 43 FR 45993. Summit County, Ohio, was listed among those areas of the country which had not yet achieved the NAAQS for sulfur dioxide. The Summit County designation was based on air quality dispersion modeling which demonstrated that air quality in Summit County is poorer than the national standards.

EPA received numerous comments that existing air quality monitors in Summit County showed attainment. The comments contended therefore that EPA should designate Summit County an attainment area based on the monitoring and that modeling analyses should not be used as the basis for determining the designation. EPA responded that Section 171(2) specifically authorized the use of modeling analyses to make area designations. In addition, EPA noted the established inadequacies of most monitoring systems.

EPA had performed dispersion modeling analyses of Summit County to set emission limitations for sulfur dioxide pollution sources in the County. Several industries in the Akron area of Summit County challenged EPA's modeling results in the United States Court of Appeals for the Sixth Circuit arguing that the EPA's modeling did not accurately calculate the pollution levels in the area and that available monitoring data showed attainment of the national standards. At the same time, a group of Akron industries were undertaking a "Summit County RAM Modeling and Monitoring Study" which involves setting out twelve continuous monitors in Akron, collecting the monitoring data and making comparisons with the model analyses. The monitors began recording pollution concentrations in October of 1978.

The first quarter (October–December, 1978) of this data was submitted to EPA on April 18, 1979. The first quarter data show that pollution levels significantly above the 24-hour primary health standard of 365 μg/m3 are being recorded at several locations in Akron. Pollution concentration of 455, 452, 426, 410, and 364 have been recorded at three locations in the Akron area. Since more than one 24-hour pollution measurement above the 365 μg/m3 safety level in one year is a violation of the national standard, violations have been measured at one monitoring site and exceedances of the standard or near exceedances have been measured at three other sites. These levels have been recorded at locations either where monitors have not previously been sited or where existing monitors had not previously recorded levels above the standard. Before the new monitors were installed, levels above the national standard had not been measured in Akron.

Since these data support EPA's designation of Summit County and were not available when the designations were made, EPA is now requesting comment on the data as additional support for the nonattainment designation. The basis for the designation remains EPA's sulfur dioxide modeling analyses which show that air quality in Akron is poorer than the national standards. The additional data only confirm that designation.

Dated: May 31, 1979.

**John McGuire,**

*Regional Administrator.*

**Pollution Concentrations Recorded in Akron, Ohio: October 1978–December 1978**

| Monitoring site | Ppm* | μg/m3 at 1013.2mb 293 K | Mo/Day/Hr |
|---|---|---|---|
| PPG Pumphouse | .171 | 455 | 12/14/10 |
| Sill Avenue | .160 | 426 | 12/5/17 |
| Sill Avenue | .154 | 410 | 12/15/02 |
| Sill Avenue | .170 | 452 | 12/16/02 |
| Barberton H.S | .137 | 364 | 12/16/06 |
| East H.S | .126 | 335 | 10/6/24 |

*The 24-hour concentrations have been calculated on a 24-hour running average from hourly recorded pollution concentrations. A running average of hourly recordings is used to determine a 24-hour pollution level pursuant to EPA guidelines for the evaluation of air quality monitoring data. Guidelines for the Interpretation of Air Quality Standards, February, 1977.

[FR Doc. 79-17737 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1240-8; OPP-00096]

## State-FIFRA Issues Research and Evaluation Group (SFIREG); Working Committee on Certification; Open Meeting

**AGENCY:** Environmental Protection Agency (EPA), Office of Pesticide Programs.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** There will be a two-day meeting of the Working Committee on Certification of the State FIFRA Issues Research and Evaluation Group (SFIREG) on Wednesday and Thursday, June 13 and 14, 1979, beginning each day at 8:30 a.m. and ending by noon on June 14th. The meeting will be held at the Radison-Muehlebach Hotel, Kansas City, Missouri, Telephone: (816) 471–1400, and will be open to the public.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Gary Gingery, Montana Department of Agriculture, Helena, Montana, Telephone: (406) 499–2944; or

Mr. Andrew Caraker, Office of Pesticide Programs (TS–770—M), EPA, 401 M Street SW., Washington, D.C. 20460, Telephone: (202) 472–9403.

**SUPPLEMENTARY INFORMATION:** This is the third meeting of the Working Committee on Certification. The meeting will be concerned with the following topics:

1. Criteria for Guidelines for industry-sponsored applicator training;

2. Cost criteria for funding formula for grants to State Lead Agencies;

3. Re-certification of applicators:

a. Is it needed?

b. If so, how should it be accomplished?

4. Establish priorities for training material needs;

5. Follow up on proposed record keeping systems for applicator certification; and

6. Other topics as appropriate.

Dated: June 1, 1979.

**Edwin L. Johnson,**

*Deputy Assistant Administrator for Pesticide Programs.*

[FR Doc. 79-17602 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

## FEDERAL MARITIME COMMISSION

### Public Access to Financial Statements

**AGENCY:** Federal Maritime Commission.

**ACTION:** Procedure for Public Access to Financial Statements.

**SUMMARY:** The Federal Maritime Commission has adopted a procedure for the inspection or copying of financial reports filed by Commission employees pursuant to the Ethics in Government Act of 1978. Reports may be inspected in the Office of the Secretary, and copies may be purchased by filing requests with the Secretary. A fee of 5¢ per page plus postage with be assessed to cover the cost of reproduction or mailing. Also available for inspection or copying are the respective official position descriptions for each employee who has filed a financial statement.

**FOR FURTHER INFORMATION CONTACT:** Francis C. Hurney, Office of the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Room 11101, Washington, D.C. 20573.

By the Commission May 30, 1979.

**Francis C. Hurney,**

*Secretary.*

[FR Doc. 79-17713 Filed 6-6-79; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 79-59]

### Stute International, Inc.—Independent Ocean Freight Forwarder Application; Order of Investigation and Hearing

Stute International, Inc., filed an application for a license as an independent ocean freight forwarder. During the course of the Commission's investigation of the applicant, it was disclosed that the firm may not meet the definition of an independent ocean freight forwarder since, through its parent company, it appeared to be connected with a consignee of goods from the United States on at least 51 shipments from the United States. Furthermore, the firm was also connected to a party which appeared to be involved in illegal rebating practices on at least 51 shipments in the foreign commerce of the United States and thus the applicant firm may not otherwise be "fit" to be licensed.

Section 1, Shipping Act, 1916, requires that applicants for licenses or licensees be independent of shipper or consignee connections. Specifically the statute defines an independent ocean freight forwarder as "* * * a person carrying on the business of forwarding * * * who is not a shipper or consignee or a seller or purchaser of shipments to foreign countries, nor has any beneficial interest therein, nor directly or indirectly controls or is controlled by such shipper or consignee or by any person having such a beneficial interest."

Section 44(b) of the Shipping Act, 1916, requires that applicants be found to be fit, willing and able properly to carry on the business of forwarding and to conform to the provisions of the Shipping Act, 1916, as amended, and the requirements, rules and regulations of the Commission issued thereunder. Otherwise, such application shall be denied.

The applicant's connection with a consignee of goods from the United States appears to prevent it from meeting the definition of an independent ocean freight forwarder as set forth in the Shipping Act, 1916, and the Commission's General Order 4. Its connection with a firm, which was possibly engaged in illegal rebating practices, also brings into question the issue of whether the applicant meets the standard of "fitness" required for licensing under section 44(b), Shipping Act, 1916.

The Commission's investigation revealed that the applicant firm is owned 100 percent by Stute-Verkehrs GmbH which in turn is owned 100 percent by Kloeckner & Co. Furthermore, there is at least one joint officer/director, Heinrich Joost, of both Kloeckner & Co., and the applicant firm. Kloeckner & Co. owns 99 percent of the stock of Chemie-Mineralien KG-Bremen (Chemie). Chemie is shown as a consignee of merchandise from the United States on at least 51 shipments for which illegal rebates were paid.

Pursuant to section 510.8 of the Commission's General Order 4 (46 CFR 510.8), the Commission on February 26, 1979, advised Stute International, Inc., of its intent to deny the application for the reasons set out above. By letter dated March 15, 1979, Stute International, Inc., requested the opportunity to show at a hearing that denial of its application is unwarranted.

Now therefore it is ordered, That pursuant to sections 1, 22 and 44 (46 U.S.C. 801, 821 and 841b) of the Shipping Act, 1916, and section 510.8 of the Commission's General Order 4 (46 CFR 510.8), a proceeding is hereby instituted to determine (1) whether Stute International, Inc., meets the definition of an independent ocean freight forwarder as set forth in the Shipping Act, 1916, and (2) whether Stute International, Inc., is otherwise fit to be licensed as an independent ocean freight forwarder.

It is further ordered, that Stute International, Inc., be made respondent in this proceeding and that the matter be assigned for public hearing before an Administrative Law Judge at a date and place to be determined by the Administrative Law Judge presiding, but in no event, later than December 3, 1979. The hearing shall include oral testimony and cross-examination at the discretion of the presiding officer only upon a showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions or other documents, or that the nature of the matter in issue is such that an oral hearing and cross-examination are otherwise necessary for the development of an adequate record.

It is further ordered, that this order be published in the **Federal Register** and that a copy thereof be served upon the respondent.

It is further ordered, that any person other than the respondent and the Commission's Bureau of Hearing Counsel having an interest and desiring to participate in this proceeding may do so by filing a timely petition for Leave to Intervene pursuant to section 510.72 of the Commission's rules.

It is further ordered, that all further notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing or of prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

**Francis C. Hurney,**

*Secretary.*

[FR Doc. 79-17715 Filed 6-6-79; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL TRADE COMMISSION

### Gulf Resources & Chemical Corp.; Early Termination of Waiting Period of the Premerger Notification Rules

**AGENCY:** Federal Trade Commission.

**ACTION:** Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

**SUMMARY:** Gulf Resources & Chemical Corporation is granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to its proposed acquisition of securities of International Systems & Controls Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted both by golf Resources and ISCC. Neither agency intends to take any

action with respect to this acquisition during the waiting period.

**EFFECTIVE DATE:** May 30, 1979.

**FOR FURTHER INFORMATION CONTACT:**

Malcolm R. Pfunder, Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, D.C. 20580 (202–523–3404).

**SUPPLEMENTARY INFORMATION:** Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the **Federal Register.**

By direction of the Commission.

**Carol M. Thomas,**

*Secretary.*

[FR Doc. 79–17674 Filed 6–6–79; 8:45 am]

**BILLING CODE 6750–01–M**

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Office of Education

### Advisory Committee on Accreditation and Institutional Eligibility; Amended Meeting

**AGENCY:** Department of Health, Education, and Welfare, Office of Education.

**ACTION:** Revision to Notice of Public Meeting.

**SUMMARY:** This notice sets forth changes in time and agenda items of the next public meeting of the Advisory Committee on Accreditation and Institutional Eligibility. Notice of the meeting was published previously in the **Federal Register** on April 30, 1979, 44 FR 25270–25271. Notice of these meetings is required under the Federal Advisory Committee Act (5 U.S.C. Appendix 1, 10(a)(2)). This document is intended to notify the general public of its opportunity to attend and participate.

**DATES:** June 20, 1979, 9:00 a.m. to 4:45 p.m., local time; June 21, 9:00 a.m. to 6:00 p.m.; and June 22, 9:00 a.m. to 2:00 p.m. Following the meeting, the Policy Review Subcommittee of the Advisory Committee will meet from 2:00 p.m. to 4:00 p.m., June 22. Requests for oral presentations regarding any of the matters added in this notice must be received on or before June 8, 1979. All written material which a party wishes to file may be submitted at any time and will be considered by the Advisory Committee.

**ADDRESS:** Old Town Holiday Inn, 480 King Street, Alexandria, Virginia.

**FOR FURTHER INFORMATION CONTACT:** John R. Proffitt, Director, Division of Eligibility and Agency Evaluation, Office of Education, Room 3030, ROB 3, 400 Maryland Avenue SW., Washington, D.C. 20202 (202/245–9873).

The schedule of the meeting is revised as noted above. In addition, the review of the petition of the Commission on Colleges, Southern Association of Colleges and Schools is removed from the agenda. The following policy matters affecting accreditation and institutional eligibility are added to the agenda:

Review of the Federal Eligibility System, including a summary by the Division of Eligibility and Agency Evaluation; excerpts from the GAO Report *What Assurances Does Office of Education's Eligibility Process Provide?;* excerpts from the report of the Carnegie Council on Policy Studies in Higher Education *Fair Practices in Higher Education: Rights and Responsibilities of Students and Their Colleges in a Period of Intensified Competition for Enrollments;* and the Advisory Committee recommendations regarding reauthorization of the Higher Education Act of 1965

Review of the Recognition Process, including an overview and a history of the development of revisions to the Criteria for Recognition

Also, the Policy Review Subcommittee of the Advisory Committee will meet from 2:00 p.m. to 4:00 p.m. on June 22. The subcommittee is established under the authority of the Advisory Committee's Charter. The subcommittee identifies policy and procedural issues affecting accreditation and institutional eligibility, reviews potential solutions and recommends appropriate action to the Advisory Committee. The meeting on June 22 will identify policy issues which have arisen during the Advisory Committee meeting, will establish priorities for the future review of these issues and will consider alternative solutions to certain policy matters. The meeting is open to the public.

Requests for oral presentations before the Committee or the Subcommittee concerning new matters published in this notice should be submitted in writing to the Director, Division of Eligibility and Agency Evaluation, Office of Education, Room 3030, ROB 3, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Requests should include the names of all persons seeking an appearance, the party or parties which they represent (if applicable), and the purpose for which the presentation is requested. Requests must be received by the Division of Eligibility and Agency Evaluation on or before June 8, 1979. Time constraints may limit oral presentations. However, all additional written material that a party wishes to file will be considered by the Advisory Committee.

Records shall be kept of all Committee proceedings and shall be available for public inspection at the Division of Eligibility and Agency Evaluation.

Signed at Washington, D.C. on May 25, 1979.

**John R. Proffitt,**

*Director, Division of Eligibility and Agency Evaluation, Office of Education.*

[FR Doc. 79–17624 Filed 6–6–79; 8:45 am]

**BILLING CODE 4110–02–M**

## Health Resources Administration

### Determination of Population of Health Service Areas

Section 1516 of the Public Health Service Act (included in the National Health Planning and Resources Development Act of 1974, Pub. L. 93–641), authorizes the Secretary of Health, Education, and Welfare to make grants (hereinafter referred to as "planning grants") to health systems agencies to assist them in meeting their costs of operation. The amount of the planning grant to each health systems agency, as provided in the regulations governing this program (42 CFR Part 122, Subpart C), is determined in accordance with a formula set forth in the regulations, and is based in part upon a determination by the Secretary of the population of the health service area to be served by each agency. Section 122.205 of the governing regulations provides that the Secretary will determine the population of the areas based upon the latest available estimate from the Department of Commerce, and will publish annually in the **Federal Register** a list of all health service areas and their populations. The populations of the health service areas will be published prior to the final allocation of funds in each fiscal year. Pursuant to section 1536 of the Act, certain States (District of Columbia, Rhode Island and Hawaii) as well as the Virgin Islands, Guam, the Trust Territory of the Pacfic Islands, the Northern Mariana Islands and American Samoa do not have health service areas established within them or health systems agencies designated for them

but are nonetheless eligible to receive planning grants based in part upon their population. This Notice sets forth the population of these areas as of July 1, 1976, on the same basis as for health service areas.

The Secretary of Health, Education, and Welfare has determined, for puposes of the determination of planning grants for health systems agencies for Fiscal Year 1979, that the population of the health service areas, based on the latest available estimates of the Department of Commerce, are to be derived from the July 1, 1976 estimates which appear in Population Reports, Series P–25, Nos. 731 and 740–789, issued by the Bureau of Census. These Series P–25 Population Reports furnish the latest available estimates for the population of States and territories by counties, incorporated places, and selected minor jurisdictions (known as "revenue-sharing estimates") which are on a comparable, uniform, and consistent basis, as needed for the derivation of population totals for health service areas. Data from the Department of Treasury, Office of Revenue Sharing "Tribe List and Extract" were used to make adjustments of the population of health service areas in Arizona and the health service area that includes portions of Arizona, New Mexico, and Utah.

Accordingly, the Secretary has made the following determination of population of the health service and other areas as described above.

Dated: May 25, 1979.

**Henry A. Foley,**

*Administrator, Health Resources Administration.*

**Health Service Area Population for Purposes of Determination of Planning Grants Fiscal Year 1979***

| | Health service area | Population |
|---|---|---|
| Alabama | 1 | 702,353 |
| | 2 | 218,141 |
| | 3 | 860,026 |
| | 4 | 470,666 |
| | 5 | 680,073 |
| | 6 | 676,904 |
| See GA. No. 5 | (7) | |
| Alaska | 1 | 50,918 |
| | 2 | 275,945 |
| | 3 | 83,769 |
| American Samoa | Sec. 1536 | 30,100 |
| Arizona | 1 | 1,383,867 |
| | 2 | 571,055 |
| | 3 | 144,543 |
| Incl. Utah No. 2–5, 900 and N. Mexico No. 2–49,030. | 4 | 132,830 |
| | 5 | 110,891 |
| Arkansas | 1 | 638,118 |
| | 2 | 561,201 |
| | 3 | 459,506 |
| | 4 | 458,028 |
| California | 1 | 577,510 |
| | 2 | 1,102,550 |
| | 3 | 534,723 |
| | 4 | 1,467,929 |
| | 5 | 1,689,931 |
| | 6 | 707,540 |
| | 7 | 1,205,367 |
| | 8 | 586,510 |
| | 9 | 1,160,332 |
| | 10 | 737,762 |
| | 11 | 6,997,386 |
| | 12 | 1,288,360 |
| | 13 | 1,755,613 |
| | 14 | 1,710,912 |
| Colorado | 1 | 1,757,166 |
| | 2 | 577,665 |
| | 3 | 241,124 |
| Connecticut | 1 | 632,391 |
| | 2 | 591,756 |
| | 3 | 499,949 |
| | 4 | 902,655 |
| | 5 | 475,542 |
| Delaware | 1 | 581,832 |
| District of Columbia | Sec. 1536 | 700,130 |
| Florida | 1 | 790,813 |
| | 2 | 564,010 |
| | 3 | 910,703 |
| | 4 | 1,492,181 |
| | 5 | 814,970 |
| | 6 | 797,046 |
| | 7 | 646,590 |
| | 8 | 850,992 |
| | 9 | 1,491,743 |
| Georgia . . . See Tenn. No. 3. | (1) | |
| | 2 | 522,387 |
| | 3 | 2,056,258 |
| Incl. S. Car. No. 5–95, 671. | 4 | 592,842 |
| Incl. Ala. No. 7–46,614 | 5 | 775,689 |
| | 6 | 532,271 |
| | 7 | 548,886 |
| Guam | Sec. 1536 | 95,900 |
| Hawaii | Sec. 1536 | 883,523 |
| Idaho | 1 | 833,067 |
| Illinois | 1 | 570,555 |
| | 2 | 702,646 |
| | 3 | 569,177 |
| | 4 | 781,863 |
| | 5 | 605,695 |
| | 6 | 3,074,084 |
| | 7 | 2,816,470 |
| | 8 | 803,688 |
| | 9 | 456,932 |
| Incl. Iowa No. 3–191,591. | 10 | 429,711 |
| See Mo. No. 3 | 11 | |
| Indiana | 1 | 1,921,482 |
| | 2 | 2,122,636 |
| | 3 | 1,268,916 |
| Iowa. Incl. Neb. No. 4–16,229. | 1 | 2,513,374 |
| See Neb. No. 3 | (2) | |
| See Ill. No. 10 | (3) | |
| Kansas | 1 | 428,509 |
| | 2 | 581,932 |
| | 3 | 812,908 |
| See Mo. No. 1 | (4) | |
| Kentucky | 1 | 1,746,464 |
| | 2 | 1,435,368 |
| See Ohio No. 1 | (3) | |
| Louisiana | 1 | 1,422,979 |
| | 2 | 1,372,693 |
| | 3 | 1,094,515 |
| Maine | 1 | 1,072,588 |
| Maryland | 1 | 314,927 |
| | 2 | 573,819 |
| | 3 | 815,933 |
| | 4 | 2,144,489 |
| | 5 | 276,128 |
| Massachusetts | 1 | 821,235 |
| | 2 | 675,267 |
| | 3 | 475,981 |
| | 4 | 2,198,510 |
| | 5 | 977,766 |
| | 6 | 644,220 |
| Michigan | 1 | 4,711,127 |
| | 2 | 676,507 |
| | 3 | 755,074 |
| | 4 | 1,028,487 |
| | 5 | 588,387 |
| | 6 | 748,738 |
| | 7 | 304,271 |
| | 8 | 330,194 |
| Minnesota: | | |
| See N.D. No. 2 | (1) | |
| Incl. Wisc. No. 7–132,721 | 2 | 470,135 |
| See N.D. No. 3 | (3) | |
| | 4 | 420,534 |
| | 5 | 1,935,646 |
| | 6 | 526,040 |
| | 7 | 398,301 |
| Mississippi | 1 | 2,365,489 |
| Missouri: | | |
| Incl. Kan. No. 4–476,798 | 1 | 1,337,966 |
| | 2 | 1,064,336 |
| Incl. Ill. No. 11–577,621 | 3 | 2,383,501 |
| | 4 | 568,949 |
| | 5 | 486,738 |
| Montana | 1 | 755,436 |
| Nebraska | 1 | 618,983 |
| | 2 | 371,723 |
| Incl. Iowa No. 2–185,369. | 3 | 730,545 |
| See Iowa No. 1 | (4) | |
| Nevada | 1 | 266,954 |
| | 2 | 345,567 |
| New Hampshire | 1 | 827,000 |
| New Jersey | 1 | 1,343,308 |
| | 2 | 1,970,756 |
| | 3 | 572,744 |
| | 4 | 2,012,467 |
| | 5 | 1,485,217 |
| New Mexico | 1 | 1,121,708 |
| See Ariz. No. 4 | (2) | |
| New York | 1 | 1,749,433 |
| | 2 | 1,212,869 |
| | 3 | 1,428,896 |
| Incl. Pa. No. 8–103,980 | 4 | 420,633 |
| | 5 | 1,355,731 |
| | 6 | 1,909,637 |
| | 7 | 7,422,807 |
| | 8 | 2,677,206 |
| North Carolina | 1 | 938,884 |
| | 2 | 1,037,538 |
| | 3 | 922,262 |
| | 4 | 744,633 |
| | 5 | 830,342 |
| | 6 | 988,440 |
| North Dakota | 1 | 290,414 |
| Incl. Minn. No. 1–159,014 | 2 | 310,858 |
| Incl. Minn. No. 3–193,627 | 3 | 396,437 |
| Northern Mariana Islands | Sec. 1536 | 15,700 |
| Ohio . . . Incl. Ky. No. 3–253,902. | 1 | 1,706,719 |
| | 2 | 1,114,240 |
| | 3 | 400,616 |
| | 4 | 1,005,391 |
| | 5 | 1,562,689 |
| | 6 | 701,459 |
| | 7 | 828,828 |
| | 8 | 669,580 |
| | 9 | 2,233,390 |
| | 10 | 758,975 |
| Oklahoma | 1 | 2,767,182 |
| Oregon | 1 | 1,016,682 |
| | 2 | 998,915 |
| | 3 | 310,298 |
| Pennsylvania | 1 | 3,777,037 |
| | 2 | 902,061 |
| | 3 | 807,747 |
| | 4 | 1,334,045 |
| | 5 | 729,106 |
| | 6 | 2,903,292 |
| | 7 | 758,647 |
| See N.Y. No. 4 | (8) | |
| | 9 | 495,103 |
| Puerto Rico | 1 | 3,205,000 |
| Rhode Island | Sec/ 1536 | 939,420 |
| South Carolina | 1 | 756,729 |
| | 2 | 792,600 |
| | 3 | 569,303 |
| | 4 | 629,913 |
| See Ga. No. 4 | (5) | |
| South Dakota | 1 | 685,799 |
| Tennessee: | | |
| Incl. Va. No. 6–85,934 | 1 | 473,263 |
| | 2 | 772,607 |
| Incl. Ga. No. 1–98,224 | 3 | 553,879 |
| | 4 | 1,370,824 |

**Health Service Area Population for Purposes of Determination of Planning Grants Fiscal Year 1979*—Continued**

| | Health service area | Population |
|---|---|---|
| | 5 | 425,659 |
| | 6 | 822,159 |
| Texas | 1 | 345,005 |
| | 2 | 348,841 |
| | 3 | 451,600 |
| | 4 | 630,525 |
| | 5 | 2,883,057 |
| | 6 | 1,206,531 |
| | 7 | 702,671 |
| | 8 | 1,131,187 |
| | 9 | 1,236,073 |
| | 10 | 598,788 |
| | 11 | 2,757,470 |
| | 12 | 320,980 |
| Trust Territory of the Pacific Islands. | Sec. 1536 | 109,800 |
| Utah | 1 | 1,226,142 |
| See Ariz. No. 4 | (2) | |
| Vermont | 1 | 480,509 |
| Virginia | 1 | 641,777 |
| | 2 | 1,027,135 |
| | 3 | 1,093,136 |
| | 4 | 921,143 |
| | 5 | 1,299,823 |
| See Tenn. No. 1 | (6) | |
| Virgin Islands | Sec. 1536 | 94,900 |
| Washington | 1 | 2,199,808 |
| | 2 | 502,249 |
| | 3 | 431,638 |
| | 4 | 477,395 |
| West Virginia | 1 | 1,832,120 |
| Wisconsin | 1 | 797,551 |
| | 2 | 1,780,537 |
| | 3 | 458,967 |
| | 4 | 502,252 |
| | 5 | 562,397 |
| | 6 | 376,446 |
| See Minn. No. 2 | (7) | |
| Wyoming | 1 | 390,616 |
| Total | 213 | 218,488,874 |

* Population based on Bureau of the Census "revenue-sharing" estimates for July 1, 1976, as noted in the accompanying text of this Notice.

[FR Doc. 79-17701 Filed 6-6-79; 8:45 am]

BILLING CODE 4110-83-M

## Determination of Population of the States

Section 1525 of the Public Health Service Act (included in the National Health Planning and Resources Development Act of 1974, Pub. L. 93-641), authorizes the Secretary of Health, Education, and Welfare to make grants ("planning and development grants") to State health planning and development agencies ("State Agencies") to assist them in meeting their costs of operation. The amount of the planning and development grant to each State health planning and development agency, as provided in the regulations governing this program (42 CFR Part 123, Subpart C), is as determined by a formula provided in the regulations, based in part upon a determination by the Secretary of the population of the States. Section 123.204(b) of the governing regulations provides that the Secretary will determine the population of each State based upon the latest available estimate from the Department of Commerce, and will publish annually in the **Federal Register** a list of all States and their populations. The purpose of this Notice is to publish this list for purposes of determining grants for fiscal year 1979.

The latest available Department of Commerce estimates of the populations of the States are the July 1, 1978 provisional estimates, which appear in the report of the Bureau of the Census, Series P-25, No. 790.

The list shown below provides those estimates, but includes population figures for Hawaii, Rhode Island, District of Columbia, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, American Samoa and the Northern Mariana Islands, which are based on July 1, 1976 estimates. Since the Secretary has determined that these States and territories meet the requirements of section 1536 of the Act, the amount of their grants as State Agencies shall be computed in accordance with 42 CFR 122.501(c). Consequently, the populations of these States and territories are determined by the Secretary in accordance with 42 CFR 122.205, and are derived on the same basis as the populations of the health service areas. The basis is described in a separate Notice in this issue of the **Federal Register.**

Accordingly, the Secretary has made the following determination of populations of the States.

Dated: May 25, 1979.

**Henry A. Foley,**

*Administrator, Health Resource Administration*

**Population of the States for Purposes of Determination of Planning and Development Grants, Fiscal Year 1979 [1]**

| | |
|---|---|
| Alabama | 3,742,000 |
| Alaska | 403,000 |
| American Samoa, Sec. 1536 | 30,000 |
| Arizona | 2,354,000 |
| Arkansas | 2,186,000 |
| California | 22,294,000 |
| Colorado | 2,670,000 |
| Connecticut | 3,099,000 |
| Delaware | 583,000 |
| District of Columbia, Sec. 1536 | 700,000 |
| Florida | 8,594,000 |
| Georgia | 5,084,000 |
| Guam, Sec. 1536 | 96,000 |
| Hawaii, Sec. 1536 | 884,000 |
| Idaho | 878,000 |
| Illinois | 11,243,000 |
| Indiana | 5,374,000 |
| Iowa | 2,896,000 |
| Kansas | 2,348,000 |
| Kentucky | 3,498,000 |
| Louisiana | 3,966,000 |
| Maine | 1,091,000 |
| Maryland | 4,143,000 |
| Massachusetts | 5,774,000 |
| Michigan | 9,189,000 |
| Minnesota | 4,008,000 |
| Mississippi | 2,404,000 |
| Missouri | 4,860,000 |
| Montana | 785,000 |
| Nebraska | 1,565,000 |
| Nevada | 660,000 |
| New Hampshire | 871,000 |
| New Jersey | 7,327,000 |
| New Mexico | 1,212,000 |
| New York | 17,748,000 |
| North Carolina | 5,577,000 |
| North Dakota | 652,000 |
| Northern Mariana Islands, Sec. 1536 | 16,000 |
| Ohio | 10,749,000 |
| Oklahoma | 2,880,000 |
| Oregon | 2,444,000 |
| Pennsylvania | 11,750,000 |
| Puerto Rico | 3,205,000 |
| Rhode Island, Sec. 1536 | 939,000 |
| South Carolina | 2,918,000 |
| South Dakota | 690,000 |
| Tennessee | 4,357,000 |
| Texas | 13,014,000 |
| Trust Territory, Sec. 1536 | 110,000 |
| Utah | 1,307,000 |
| Vermont | 487,000 |
| Virginia | 5,148,000 |
| Virgin Islands, Sec. 1536 | 95,000 |
| Washington | 3,774,000 |
| West Virginia | 1,860,000 |
| Wisconsin | 4,679,000 |
| Wyoming | 424,000 |
| Total | 221,634,000 |

[1] Population based on Bureau of the Census provisional estimates for July 1, 1978, except for States and territories which meet the requirements of Section 1536 of the Public Health Service Act, as noted in the accompanying text of this Notice. Population figures for these States and territories relate to July 1, 1976, and are the same (except for rounding), as those shown in the population estimates for health service areas presented in a separate Notice in this issue of the Federal Register.

[FR Doc. 79-17702 Filed 6-6-79; 8:45 am]

BILLING CODE 4110-83-M

## DEPARTMENT OF HEALTH EDUCATION AND WELFARE

### Office of Human Development Services

### White House Conference on Handicapped Individuals; National Implementation Advisory Committee; Meeting

The White House Conference on Handicapped Individuals Implementation Advisory Committee was established by the Department of Health, Education and Welfare to advise and assist the Secretary of HEW in the review and implementation of the recommendations made by the White House Conference on Handicapped Individuals.

Notice is hereby given persuant to The Federal Advisory Committee Act, (Public Law 95-463, 5 U.S.C. App. 1, sec. 10, 1976) that the Committee will hold a meeting on June 27, 28 and 29, 1979 from 9:00 AM to 5:00 PM, Room 800, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C.

At this meeting the Committee will review actions taken by the federal government to implement items of the Implementation Plan, Vol. 111 of the White House Conference Documents.

Further information on the Committee may be obtained from Mr. Peter Rosenstein, White House Conference Implementation Unit, Room 3520, 330 C Street S.W., Washington D.C. 20201, Telephone (202) 245–3186. Advisory Committee meetings are open for public observation.

Dated: June 4, 1979.

**Arnold Sampson,**

*HDS Committee Management Officer.*

[FR Doc. 79–17653 Filed 6–6–79; 8:45 am]

BILLING CODE 4110–92–M

## Social Security Administration Advisory Council on Social Security; Public Meetings

**AGENCY:** Advisory Council on Social Security, HEW.

**ACTION:** Notice is hereby given, pursuant to Public Law 92–463, that the Advisory Council on Social Security, established pursuant to section 706 of the Social Security Act, as amended, will meet on Friday, July 6, 1979 from 9:00 a.m. to 5:00 p.m. and Saturday, July 7, 1979, from 9:00 a.m. to 5:00 p.m. at the Marriott Twin Bridges Hotel, U.S. 1 and I–395, Washington, D.C. 20024. The meetings will be devoted to the topics of social security benefits and financing.

These meetings are open to the public.

Individuals and groups who wish to have their interest in the Social Security program taken into account by the Council may submit written comments, views, or suggestions to Mr. Lawrence H. Thompson.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lawrence H. Thompson, Executive Director, Advisory Council on Social Security, P.O. Box 17054, Baltimore, Maryland 21235.

Telephone inquiries should be directed to Mr. Edward F. Moore, (301) 594–3171.

(Catalog of Federal Domestic Assistance Program Numbers 13.800–13.807 Social Security Program.)

Dated: June 1, 1979.

**Lawrence H. Thompson,**

*Executive Director, Advisory Council on Social Security.*

[FR Doc. 79–17614 Filed 6–6–79; 8:45 am]

BILLING CODE 4110–07–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. D–79–569]**

### Designation of Authority

**AGENCY:** Hartford Area Office, Region I, (HUD).

**ACTION:** Designation of Authority—Order of Succession.

**SUMMARY:** This document designates the order of succession to the position of Acting Area Manager, in the absence of the Area Manager and the Deputy Area Manager.

**EFFECTIVE DATE:** April 16, 1979.

**SUPPLEMENTARY INFORMATION:** The officials appointed to the following listed positions in the Hartford Area Office, Region I, are hereby designated to serve as Acting Area Manager, Hartford, Region I, during the absence of the Area Manager and Deputy Area Manager, with all powers, functions, and duties redelegated or assigned to the Area Manager: Provided, that no official is authorized to serve as Acting Area Manager unless all other officials whose titles precede his in this designation are unable to act by reason of absence or vacancy in the position:

1. Director, Housing Division.
2. Director, Community Planning and Development Division.
3. Area Counsel.
4. Director, Fair Housing and Equal Opportunity Division.

This designation shall supersede any previous designations.

Issued at Hartford, Connecticut, April 16, 1979.

**John W. McLean,**

*Area Manager, Hartford Area Office Region I.*

[FR Doc. 79–17643 Filed 6–6–79; 8:45 am]

BILLING CODE 4210–01–M

**[Docket No. D–79–551]**

### Office of the Service Office Supervisor, Fort Worth Service Office; Designation

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Designation of Line of Succession.

**SUMMARY:** The Service Office Supervisor is designating officials who may serve as Acting Service Office Supervisor during the absence of, or vacancy in the position of, the Service Office Supervisor.

**EFFECTIVE DATE:** April 13, 1979.

**SUPPLEMENTARY INFORMATION:** Each of the officials appointed to the following positions is designated to serve as Acting Service Office Supervisor during the absence of, or vacancy in the position of, the Service Office Supervisor, with all the powers, functions, and duties redelegated or assigned to the Service Office Supervisor; provided that no official is authorized to serve as Acting Service Office Supervisor unless all officials before him in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Service Office Supervisor.
2. Chief, Mortgage Credit.
3. Chief Appraiser.

**Irving Statman,**

*Area Manager Dallas Area Office Region VI (Dallas).*

**Thomas J. Armstrong,**

*Regional Administrator, Region VI (Dallas).*

[FR Doc. 79–17644 Filed 6–6–79; 8:45 am]

BILLING CODE 4210–01–M

**[Docket No. D–79–568]**

### Office of the Area Manager; Oklahoma City Area Office

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Designation of Line of Succession.

**SUMMARY:** The Area Manager is designating officials who may serve as Acting Area Manager during the absence of, or vacancy in the position of, the Area Manager.

**EFFECTIVE DATE:** June 7, 1979.

**SUPPLEMENTARY INFORMATION:** Each of the officials appointed to the following position is designated to serve as Acting Area Manager during the absence of, or vacancy in the position of, the Area Manager, with all the powers, functions, and duties redelegated or assigned to the Area Manager: Provided, that no official is authorized to serve as Acting Area Manager unless all preceding officials in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Area Manager.
2. Director, Housing Division.
3. Area Counsel.
4. Director, Community Planning & Development Division.

This designation supersedes the unpublished designation effective February 2, 1977.

(Delegation of Authority by the Secretary effective October 1, 1970; 36 FR 3389, February 23, 1971).

**Emil L. Huber, Jr.,**

*Area Manager, Oklahoma City Area Office, Region VI (Dallas).*

**Thomas J. Armstrong,**

*Regional Administrator, Region VI (Dallas).*

[FR Doc. 79-17645 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-01-M

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**[Docket No. D-79-574]**

## Baltimore Area Office; Designation of Authority

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Designation of Authority, Order of Succession.

**SUMMARY:** Updates the designation of officials who may serve as Acting Area Manager for the Baltimore Area Office when the Area Manager is unable to serve by reason of absence.

**EFFECTIVE DATE:** January 1, 1979.

**FOR FURTHER INFORMATION CONTACT:** William F. Hall, Jr., Regional Counsel, U.S. Department of Housing and Urban Development, Region III, 6th & Walnut Streets, Room 994, Philadelphia, Pennsylvania 19106.

### Designation of Acting Area Manager for Baltimore Area Office

Each of the officials appointed to the following positions is designated to serve as Acting Area Manager during the absence of the Area Manager, with all the powers, functions and duties delegated or assigned to the Area Manager; *Provided*, That no official is authorized to serve as Acting Area Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Area Manager.
2. Director, Housing Division.
3. Director, CPD Division.
4. Area Counsel.

The designation supersedes the designation effective June 27, 1975 (40 FR 28843).

[Delegation of Authority (36 FR 3389, 2-23-71) [37 FR 746, 1-18-72])

**Harry W. Staller,**

*Deputy Regional Administrator, Region III (Phila.).*

[FR Doc. 79-17637 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-01-M

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**[Docket No. D-79-571]**

## Charleston Service Office; Designation of Authority

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Designation of Authority, Order of Succession.

**SUMMARY:** Updates the designation of officials who may serve as Acting Supervisor for the Charleston Service Office when the Supervisor is unable to serve by reason of absence.

**EFFECTIVE DATE:** January 1, 1979.

**FOR FURTHER INFORMATION CONTACT:** William F. Hall, Jr., Regional Counsel, U.S. Department of Housing and Urban Development, Region III, 6th & Walnut Streets, Room 994, Philadelphia, Pennsylvania 19106.

### Designation of Acting Supervisor for Charleston Service Office

Each of the officials appointed to the following positions is designated to serve as Acting Supervisor during the absence of the Supervisor, with all the powers, functions and duties delegated or assigned to the Supervisor; *Provided*, That no official is authorized to serve as Acting Supervisor unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Supervisor for Development.
2. Deputy Supervisor for Management.

(Delegation of Authority (36 FR 3389, 2-23-71) (37 FR 746, 1-18-72))

**Harry W. Staller,**

*Deputy Regional Administrator, Region III (Phila.).*

[FR Doc. 79-17641 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-01-M

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**[Docket No. D-79-575]**

## Washington, D.C., Area Office; Designation of Authority

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Designation of Authority, Order of Succession.

**SUMMARY:** Updates the designation of officials who may serve as Acting Area Manager for the Washington, D.C. Area Office when the Area Manager is unable to serve by reason of absence.

**EFFECTIVE DATE:** January 1, 1979.

**FOR FURTHER INFORMATION CONTACT:** William F. Hall, Jr., Regional Counsel, U.S. Department of Housing and Urban, Development, Region III, 6th & Walnut Streets, Room 994, Philadelphia, Pennsylvania 19106.

### Designation of Acting Area Manager for Washington, D.C., Area Office

Each of the officials appointed to the following positions is designated to serve as Acting area Manager during the absence of the Area Manager, with all the powers, functions and duties delegated or assigned to the Area Manager; *Provided*, That no official is authorized to serve as Acting Area Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Area Manager.
2. Area Counsel.
3. Director, Housing Division.
4. Director, Community Planning and Development Division.

The designation supersedes the designation effective June 27, 1975 (40 FR 28843).

(Delegation of Authority (36 FR 3389, 2-23-71) (37 FR 746, 1-18-72))

**Harry W. Staller,**

*Deputy Regional Administrator, Region III (Phila.).*

[FR Doc. 79-17638 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-01-M

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**[Docket No. D-79-573]**

## Pittsburgh Area Office; Designation of Authority

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Designation of Authority, Order of Succession.

**SUMMARY:** Updates the designation of officials who may serve as Acting Area Manager for the Pittsburgh Area Office when the Area Manager is unable to serve by reason of absence.

**EFFECTIVE DATE:** January 1, 1979.

**FOR FURTHER INFORMATION CONTACT:** William F. Hall, Jr., Regional Counsel, U.S. Department of Housing and Urban Development, Region III, 6th & Walnut Streets, Room 994, Philadelphia, Pennsylvania 19106.

### Designation of Acting Area Manager for Pittsburgh Area Office

Each of the officials appointed to the following positions is designated to serve as Acting Area Manager during the absense of the Area Manager, with

all powers, functions and duties delegated or assigned to the Area Manager; *Provided,* That no official is authorized to serve as Acting Area Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Area Manager.
2. Director, Housing Division.
3. Director, CPD Division.
4. Area Counsel.

The designation supersedes the designation effective June 27, 1975 (40 FR 28843).

(Delegation of Authority (36 FR 3389, 2-23-71) (37 FR 746, 1-18-72))

**Harry W. Staller,**

*Deputy Regional Administrator, Region III (Phila.).*

[FR Doc. 79-17639 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-01-M

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[Docket No. D-79-570]

## Philadelphia, Pa., Area Office; Designation of Authority

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Designation of Authority, Order of Succession.

**SUMMARY:** Updates the designation of officials who may serve as Acting Area Manager for the Philadelphia, Pa. Area Office when the Area Manager is unable to serve by reason of absence.

**EFFECTIVE DATE:** July 2, 1978.

**FOR FURTHER INFORMATION CONTACT:** William F. Hall, Jr., Regional Counsel, U.S. Department of Housing and Urban Development, Region III, 6th & Walnut Streets, Room 994, Philadelphia, Pa. 19106, (215) 597-2655.

### Designation of Acting Area Manager for Philadelphia Area Office

Each of the officials appointed to the following positions is designated to serve as acting Area Manager during the absence of the Area Manager, with all the powers, functions and duties delegated or assigned to the Area Manager; *Provided,* That no official is authorized to serve as Acting Area Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Area Manager.
2. Director, Community Planning and Development Division.
3. Director, Housing divisions.
4. Area Counsel.

The Designation supersedes the designation effective Tuesday, August 4, 1975 (40 FR 33851).

(Delegation of Authority (36 FR 3389, 2-23-71) (37 FR 746, 1-18-72))

**Harry W. Staller,**

*Deputy Regional Administrator, Region III (Phila.)*

[FR Doc. 79-17672 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-02-M

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[Docket No. D-79-572]

## Richmond Area Office; Designation of Authority

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Designation of Authority, Order of Succession.

**SUMMARY:** Updates the designation of officials who may serve as Acting Area Manager for the Richmond Area Office when the Area Manager is unable to serve by reason of absence.

**EFFECTIVE DATE:** February 23, 1979.

**FOR FURTHER INFORMATION CONTACT:** William F. Hall, Jr., Regional Counsel, U.S. Department of Housing and Urban Development, Region III, 6th & Walnut Streets, Room 994, Philadelphia, Pennsylvania 19106.

### Designation of Acting Area Manager for Richmond Area Office

Each of the officials appointed to the following positions is designated to serve as Acting Area Manager during the absence of the Area Manager, with all the powers, functions and duties delegated or assigned to the Area Manager; Provided, That no official is authorized to serve as Acting Area Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. Deputy Area Manager.
2. Director, Community Planning and Development Division.
3. Director, Housing Division.
4. Deputy Director for Housing Development.
5. Deputy Director for Housing Management.

The designation supersedes the designation effective July 9, 1975 (40 FR 28843).

(Delegation of Authority (36 FR 3389, 2-23-71) (37 FR 746, 1-18-72))

**Harry W. Staller,**

*Deputy Regional Administrator, Region III (Phila.).*

[FR Doc. 79-17640 Filed 6-6-79; 8:45 am]

BILLING CODE 4210-01-M

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[Portland Area Office Redelegation Order 3, Amendment No. 7]

### Superintendents; Delegation of Authority Concerning Real Property Management Matters

May 9, 1979.

This notice is published in exercise of authority delegated by Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 1.

This delegation is issued under the authority delegated to the Commissioner of Indian Affairs from the Secretary of the Interior in 10 BIAM 2.1 and redelegated by the Commissioner to the Area Directors in 10 BIAM 3.

The Portland Area Office Redelegation Order 3 published beginning on page 15813 of the October 14, 1969, **Federal Register** (34 FR 15813) is amended in Section 2.10 to remove the dollar limitation on trust to trust transactions which may be approved by the Superintendents.

As amended, Part 2 of Portland Area Office Redelegation Order 3 reads as follows:

### PART 2—AUTHORITY OF SUPERINTENDENTS, SCHOOL SUPERINTENDENT, AND PROJECT ENGINEER

Subject to the provisions of Part 1, Superintendents, School Superintendents, and Project Engineer may exercise the authority of the Area Director as indicated in this part.

* * * * *

*Sec. 2.10 Sales, fee patents and other matters.*—Sales, fee patents and other matters to be conducted when authorized by law in accordance with 25 CFR Part 121.

* * * * *

(c) Approve conveyances on approved forms when land remains in trust for sales, exchanges, gifts, partitions, and acquisitions of trust lands.

* * * * * *

Effective Date. This amendment is effective June 7, 1979.

**Vicent Little,**

*Area Director.*

Approved:

**Martin E. Seneca, Jr.,**

*Acting Deputy Commissioner of Indian Affairs.*

[FR Doc. 79-17625 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-02-M

## Bureau of Land Management

[Bureau Order No. 701, Amendment No. 28]

### Cadastral Survey—Redelegation of Authority

Bureau Order No. 701, dated July 23, 1964, is further amended as follows:

Part V is amended to read:

**PART V—REDELEGATION OF AUTHORITY TO THE CHIEF, DIVISION OF CADASTRAL SURVEY, HEADQUARTERS OFFICE**

*Section 5.0—Function of Chief, Division of Cadastral Survey.* (a) In accordance with existing policies, regulations, and procedures of this Department, and under the direct supervision of the Assistant Director-Technical Services, the Chief, Division of Cadastral Survey of the Bureau of Land Management, is authorized to perform all functions and to sign for the Director, all documents relating to the appointment of mineral surveyors.

Part IX is added as follows:

**PART IX—REDELEGATION OF AUTHORITY TO THE CHIEF, CADASTRAL SURVEY EXAMINATION AND APPROVAL STAFF, SERVICE CENTER**

*Section 9.0—Functions of the Chief, Cadastral Survey Examination and Approval Staff.* (a) In accordance with existing policies, regulations and procedures of this Department, and under the administrative supervision of the Chief, Office of Technical and Scientific Services, and the technical supervision of the Chief, Division of Cadastral Survey, Headquarters Office, the Chief, Cadastral Survey Examination and Approval Staff, is authorized to perform all functions and to sign for the Director, all documents relating to (1) approval and acceptance of all types of surveys, (2) approval of all types of protracted surveys, and (3) approval of Outer Continental Shelf Official Protraction Diagrams.

**Arnold E. Petty,**

*Acting Director.*

June 4, 1979.

[FR Doc. 79-17626 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

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[I-14810]

### Offer of Lands

May 29, 1979.

Pursuant to the provisions of the Act of May 31, 1962 (76 Stat. 89), the following lands, found upon survey to be omitted lands of the United States, will be offered for sale:

**Boise Meridian, Idaho**

T. 7 N., R. 39 E.,
- Sec. 24, lots 5 and 6;
- Sec. 25, lots 5, 6, and 7;
- Sec. 26, lot 13;
- Sec. 34, lots 11, 12, 13, 14, and 16 ( portion lying north of the Hibbard-Plano Road)

T. 7 N., R. 40 E.,
- Sec. 9, lot 3;
- Sec. 10, lot 14 ( portion lying south of an east-west line which intersects the restored meander line for the left bank at angle point 3, and the west line of lot 14), NW¼SE¼ (portion lying east of fence which parallels road along east edge of Consolidated Farmers Canal), lot 23 (portion lying east of fence which parallels road along east side of Consolidated Farmers Canal);
- Sec. 16, lot 12, lot 14 (portion beginning at the witness corner of an angle point 4 on the restored original meander line for the right bank; thence northeasterly along original meander line for approximately 17 chains to the intersection with the east lot line of lot 14; thence south along east lot line for approximately 20.5 chains to the intersection with the restored original meander line for the left bank; thence southwesterly along original meander line for approximately 5.5 chains to the special meander corner for the right bank; thence north approximately 3.5 chains; thence northwesterly (N 44° W) for approximately 10 chains to the witness corner of angle point 4, the point of beginning.

T. 7 N., R. 40 E.,
- Sec. 16, lot 15;
- Sec. 17, lots 7 and 12;
- Sec. 18, lot 8;
- Sec. 19, lots 10, 11, 12, 14, and 16.

The area described aggregates approximately 186.16 acres.

2. The plat of survey was filed in the Land Office records in Boise at 10:00 a.m. on June 14, 1976.

3. Persons claiming a preference right in accordance with the provisions of the Act, must file with the Bureau of Land Management, Federal Building, 550 West Fort Street, Box 042, Boise, Idaho 83724, before August 1, 1979, a notice of their intention to apply to purchase all or part of the lands as qualified preference right claimants.

4. The Act grants a preference right to purchase the above lands to any citizens of the United States (including corporations, partnerships, firms, or other legal entity having authority to hold title to lands in the State of Idaho) who, in good faith, under color of title or claiming as a riparian owner has, prior to March 30, 1961, placed valuable improvements upon, reduced to cultivation, or occupied any of the lands so offered for sale, or whose ancestors or predecessors in interest have taken such action.

5. The lands are determined to be suitable for sale and will be sold at their fair market value subject to:

(a) Qualified preference right claims.

(b) A reservation to the United States of all the coal, oil, gas, shale, phosphate, potash, sodium, native asphalt, solid and semisolid bitumen and bituminous rock, including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried, together with the right to prospect for, mine, and remove the same.

(c) A reservation to the United States of a 100-foot strip of land along and parallel to the banks of the Snake River for use of the public for access and recreation.

**Lorin J. Welker,**

*Chief, Division of Technical Services.*

[FR Doc. 79-17627 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

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### Outer Continental Shelf Official Protraction Diagram; Availability

Notice is hereby given that, effective with this publication, the following OCS Official Protraction Diagrams, last approved or revised on the date indicated, are on file and available, for information only, in the New York Outer Continental Shelf Office, Bureau of Land Management, New York, New York. In accordance with Title 43, Code of Federal Regulations, these protraction diagrams are the basic record for the description of mineral and oil and gas lease offers in the geographic areas they represent.

**Outer Continental Shelf Official Protraction Diagrams**

*Description and Latest Revision or Approval Date*

NJ 18-11—Currituck Sound, April 25, 1978.
NJ 19-2—Veatch Canyon, January 25, 1979.

Copies of these protraction diagrams may be purchased for $2.00 each from the Manager, New York Outer Continental Shelf Office, Federal Building, 26 Federal Plaza, Suite 32-120, New York, New York 10007.

Dated: May 8, 1979.

**Judith B. Gresham,**

*Acting Manager, New York Outer Continental Shelf Office.*

[FR Doc. 79-17629 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

## Outer Continental Shelf Official Protraction Diagram; Availability

Notice is hereby given that, effective with this publication, the following OCS Official Protraction Diagrams, last approved or revised on the date indicated, are on file and available, for information only, in the New York Outer Continental Shelf Office, Bureau of Land Management, New York, New York. In accordance with Title 43, Code of Federal Regulations, these protraction diagrams are the basic record for the description of mineral and oil and gas lease offers in the geographic areas they represent.

**Outer Continental Shelf Official Protraction Diagrams**

*Description and latest revision or approval date*

NJ 18–12—April 18, 1979.
NK 19–8—Chatham, April 18, 1979.

Copies of these protraction diagrams may be purchased for $2.00 each from the Manager, New York Outer Continental Shelf Office, Federal Building, 26 Federal Plaza, Suite 32–120, New York, New York 10007.

Dated: May 18, 1979.

**Frank Basile,**

*Manager, New York Outer Continental Shelf Office.*

[FR Doc. 79–17628 Filed 6–6–79; 8:45 am]

BILLING CODE 4310–84–M

## Vale District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Public Law 92–463 that a meeting of the Vale District Grazing Advisory Board will be held on June 28, 1979.

The meeting will begin at 9:00 a.m. in the Conference Room of the Bureau of Land Management at 365 "A" Street, West, Vale, Oregon 97918.

The agenda for the meeting will include: (1) Proposed expenditure of range betterment funds in fiscal year 1980 and (2) A field tour to review an area preparatory to the development of an Allotment Management Plan.

The meeting is open to the public. Interested persons may make oral statements to the board, or may file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 365 "A" Street, West, Vale, Oregon 97918, by June 25, 1979. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and be available during regular business hours for public inspection and reproduction within 30 days following the meeting.

**Fearl M. Parker,**

*District Manager.*

May 29, 1979.

[FR Doc. 79–17630 Filed 6–6–79; 8:45 am]

BILLING CODE 4310–84–M

## Wyoming; Scab Creek Wilderness Instant Study Area Environmental Impact Statement Scoping Meetings

May 29, 1979.

Section 1501.7(b)(4) of the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act requires that scoping meetings be held prior to the preparation of an environmental impact statement (EIS). In accordance with that subsection, scoping meetings will be held to assess the issues, interest, and significance of the proposal to designate the Scab Creek Instant Study Area as a wilderness area, prior to starting the Scab Creedk EIS. Those lands which are to be evaluated in the EIS are:

**Sixth Principal Meridian, Wyoming**

T. 32 N., R. 106 W.,
- Section 4;
- Section 5;
- Section 6;
- Section 7, Lots 3 to 8, inclusive, NE¼NE¼ and NE¼NW¼;
- Section 8, Lots 1 and 2;
- Section 9, NE¼.

T. 33 N., R. 106 W.,
- Section 17;
- Section 18, Lots 1 and 2, NE¼, E½NW¼, NE¼, SW¼, N½SE¼;
- Section 19, S½SE¼NE¼, NE¼SE¼;
- Section 20;
- Section 21, S½;
- Section 23;
- Section 29, N½, SE¼, NW¼SW¼, and E½SW¼;
- Section 32, Lots 2, 3, and 4, NE¼, and N½SE¼;
- Section 33.

T. 32 N., R. 107 W.,
- Section 1, Lots 6, 7, 8, and 13 and SW¼SE¼;
- Section 12, Lots 1 and 2, W½NE¼, and NE¼NW¼.

T. 33 N., R. 107 W.,
- Section 13, N½;
- Section 14, NE¼ (excluding waters of Soda Lake), and NE¼NW¼ (excluding waters of Soda Lake).

This encompasses approximately 8,000 acres.

Public comment is hereby requested from all persons who wish to state their views or interest on the significance of this proposal to designate these lands as wilderness. This public comment will be used to determine the scope of impacts to be addressed in the EIS for the Scab Creek Instant Study Area. There will be three public meetings to gather the public comment. The meetings will be held at the Lander Resource Area Office in Lander, Wyoming, at 7 p.m. on June 26, 1979, the Pinedale Resource Area Office in Pinedale, Wyoming, at 7 p.m. on June 27, 1979, and at the Rock Springs District Office in Rock Springs, Wyoming, at 7 p.m. on June 28, 1979, to present the proposal and obtain comments from the public.

Following the meetings, the Bureau of Land Management will prepare an EIS for public review and make a report, through the Director, Bureau of Land Management, and the Secretary of the Interior, to the President of the United States with a recommendation on whether or not the Scab Creek Instant Study Area should be included in the National Wilderness Preservation System.

Further information can be obtained by contacting Jerry Wilfong, Scab Creek EIS Team Leader, Rock Springs District Office, Bureau of Land Management, Box 1869, Rock Springs, Wyoming 82901, telephone (307) 382–5350.

**Daniel P. Baker,**

*State Director.*

[FR Doc. 79–17631 Filed 6–6–79; 8:45 am]

BILLING CODE 4310–84–M

## Montrose District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Montrose District Grazing Advisory Board will be held on July 17 and 18, 1979. On July 17 the meeting will convene at 10:00 a.m. in the conference room of the Bureau of Land Management Office, Highway 550 South, Montrose, Colorado. On July 18 the meeting will convene at 8:00 a.m. at the same place.

On July 18 attendees will travel to allotments within the Gunnison Basin Resource Area to discuss grazing use problems and associated alternatives and look at present range conditions and trends.

The agenda for the meeting will include: (1) Nomination and election procedures for 1979 election; (2) the expenditure of advisory board funds for range improvements; (3) a review and update on implementation of allotment management plans and related projects in the Uncompahgre Basin Resource Area; (4) a review of the current status and program relating to the planning

process and environmental statement efforts in the Gunnison Basin American Flats—Silverton Planning Areas; and, (5) the arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the board between 10:00 and 11:00 a.m. on July 17, 1979, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 1269, Montrose, Colorado, 81401, by July 13, 1979. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Persons desiring to make the tour on July 18 should furnish their own transportation, food, and drink.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproductions (during regular business hours) within 30 days following the meeting.

**Marlyn V. Jones,**

*District Manager.*

[FR Doc. 79-17687 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

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**[NM 36769, 36804, 36807, 36842, 36843, 36844, 36845 and 36846]**

## New Mexico; Applications

May 29, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for eight 4½-inch natural gas pipeline rights-of-way across the following lands:

**New Mexico Principal Meridian, New Mexico**

T. 28 N., R. 5 W.,
  Sec. 23, SE¼NE¼.
T. 29 N., R. 8 W.,
  Sec. 8, lot 7;
  Sec. 9, S½NE¼;
  Sec. 14, SW¼SE¼;
  Sec. 23, NW¼NE¼, N½SW¼ and SW¼SW¼;
  Sec. 27, NE¼Ne¼.
T. 30 N., R. 10 W.,
  Sec. 3, lots 5 and 9.
T. 28 N., R. 13 W.,
  Sec. 11, lot 1;
  Sec. 12, lot 4 and SW¼SW¼.

These pipelines will convey natural gas across 1.505 miles of public lands in Rio Arriba and San Juan Counties, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

**Fred E. Padilla,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-17688 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

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**[NM 36740 and 36754]**

## New Mexico; Applications

May 25, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has filed rights-of-way applications for a cathodic protection station and two 4½-inch natural gas pipelines across the following lands:

**New Mexico Principal Meridian, New Mexico**

T. 18 S., R. 29 E.,
  Sec. 18, lot 4 and E½SW¼;
  Sec. 19, lot 1.
T. 26 S., R. 32 E.,
  Sec. 11, NE¼NW¼.

The cathodic protection station, with appurtenances, and the pipelines will convey natural gas across 0.481 of a mile of public lands in Eddy and Lea Counties, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

**Fred E. Padilla,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-17689 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

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**[NM 36840]**

## New Mexico; Application

May 29, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Company of New Mexico has applied for five 4-inch natural gas pipeline rights-of-way across the following land:

**New Mexico Principal Meridian, New Mexico**

T. 31 N., R. 12 W.,
  Sec. 27, NE¼SE¼ and S½SE¼
  Sec. 28, N½NE¼, NE¼NW¼ and NE¼SE½;
  Sec. 34, SE¼NE¼, SE¼NW¼ and N½SE¼.

This pipeline will convey natural gas across 1.34 miles in length of public land in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

**Fred E. Padilla,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-17690 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

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**[NM 36737]**

## New Mexico; Application

May 31, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Llano, Incorporated has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

**New Mexico Principal Meridian, New Mexico**

T. 21 S., R. 26 E.,
  Sec. 21, E½SW¼;
  Sec. 28, NE¼NW¼.

This pipeline will convey natural gas across 0.634 of a mile of public land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management,

P.O. Box 1397, Roswell, New Mexico 88201.

**Fred E. Padilla,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-17691 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

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**[NM 36839]**

### New Mexico; Application

May 30, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Company of New Mexico has applied for a right-of-way application for one 4-inch natural gas pipeline and two well sites across the following land:

**New Mexico Principal Meridian, New Mexico**

T. 18 S., R. 31 E.,
Sec. 27, SW¼NW¼ and W½SW¼;
Sec. 34, W½NW¼ and NW¼SW¼.

This pipeline will convey natural gas across 1.158 miles of public land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

**Fred E. Padilla,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-17692 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

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**[NM 36750]**

### New Mexico; Application

May 31, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Northwest Pipeline Corporation has applied for three 4½-inch natural gas pipelines right-of-way across the following lands:

**New Mexico Principal Meridian, New Mexico**

T. 31 N., R. 8 W.,
Sec. 6, lots 1, 2 and 3.
T. 32 N., R. 8 W.,
Sec. 30, lots 3, 4 and SE¼SW¼;
Sec. 31, lot 4, W½NE¼, NE¼NW¼ and SE¼SW¼.
T. 32 N., R. 9 W.,
Sec. 25, lots 9, 10, 13, 14 and 15.

These pipelines will convey natural gas across 2.135 miles of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

**Fred E. Padilla,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-17693 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

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**[NM 36862]**

### New Mexico; Application

May 31, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Transwestern Pipeline Company has applied for one 4-inch natural gas pipeline right-of-way across the following land:

**New Mexico Principal Meridian, New Mexico**

T. 17 S., R. 25 E.,
Sec. 32, SE¼SE¼,
Sec. 33, N½SW¼ and SW¼SW¼.

This pipeline will convey natural gas across 0.564 of a mile of public land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

**Fred E. Padilla,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-17694 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

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**[U-27914]**

### Utah; Proposed Withdrawal and Reservation of Lands

The Bureau of Land Management, Department of the Interior has filed withdrawal application, U-27914, for the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws subject to valid existing rights:

**Salt Lake Meridian**

T. 13 S., R. 4 W.,
Sec. 29, W½NE¼, SE¼NE¼, E½W½, SE¼;
Sec. 32, F½, E½NW¼, SW¼;
Sec. 33, SW¼SW¼.
T. 13 S., R. 4 W.,
Sec. 4, lot 4;
Sec. 5, lots 1, 2;
Sec. 8, S½SE¼;
Sec. 9, S½SW¼;
Sec. 17, N½NE¼.
T. 13 S., R. 5 W.,
Sec. 12, SE¼;
Sec. 13, E½, SW¼;
Sec. 14, SE¼;
Sec. 23, N½NE¼;
Sec. 24, N½N½;
Sec. 33, N½SE¼, SE¼SE¼;
Sec. 34, S½;
Sec. 35, SW¼.
T 14 S., R. 5 W.,
Sec. 3, lots 1, 2, 3, 4, S½ N½, SE¼.

The area described aggregates approximately 3,541.85 acres in Juab County, Utah.

The applicant desires the withdrawal to protect existing and planned recreational developments within the Little Sahara Recreation Lands. These consist of roads, campgrounds, picnic areas and a visitor center and administration site. On or before July 20, 1979, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the undersigned. Notice of the public hearing will be published in the **Federal Register** giving the time and place of

such hearing. The public hearing will be scheduled and conducted in accordance with BLM manual, § 2351.16B.

The Departmentof the Interior's regulations provide that the authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources with the view of assuring that the area sought is the minimum essential to meet the applicant's needs, providing for the maximum concurrent utilization of the lands for purposes other than the applicant's and reaching agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior, who will determine whether or not the lands will be withdrawn and reserved as requested by the applicant agency.

The determination of the Secretary on the application will be published in the **Federal Register**.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated from entry as specified above unless the application is rejected or the withdrawal is approved prior to that date. If the withdrawal is approved by the Secretary, the segregation will remain in effect for a period of 20 years from the date of such approval.

All communications in connection with this proposed withdrawal should be addressed to the undersigned, Bureau of Land Management, Department of the Interior, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: June 1, 1979.

**Paul L. Howard,**

*State Director.*

[FR Doc. 79-17695 Filed 6-6-79; 8:45 am]

**BILLING CODE 4310-84-M**

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**[U-26415]**

## Utah; Order Providing for Opening of Public Lands

1. In an exchange of lands made under the provision of Section 8 of the Act of June 28, 1934, 48 Stat. 1272, as amended 43 U.S.C. 315g (1970), the following described lands have been reconveyed to the United States:

**Salt Lake Meridian, Utah**

T. 17 S., R. 16 E.,
Sec. 27, SW¼NW¼, W½SE¼.
T. 18 S., R. 16 E.,
Sec. 10, NW¼SE¼;
Sec. 31, lot 3, SW¼SE¼.
T. 20 S., R. 16 E.,
Sec. 3, lot 12;
Sec. 8, S½SW¼,
Sec. 17, lots 1, 2, 3.

Area aggregates 483.38 acres in Emery County

2. The mineral rights in the lands were reserved (U.S. has always had the mineral rights to the coal in Twps. 17 and 18 S., R. 16 E.) and are not affected by this order.

3. The lands shall be open to operation of the public land laws generally at 10:00 a.m. on July 15, 1979, subject to valid existing rights, the provision of existing withdrawals, and provisions of the Bureau of Land Management classification for multiple use management.

4. The topography of the lands run from rough and mountainous to relatively level lands along the Green River. The lands, while in private ownership, were used for livestock grazing.

5. Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: May 29, 1979.

**Paul L. Howard,**

*State Director.*

[FR Doc. 79-17696 Filed 6-6-79; 8:45 am]

**BILLING CODE 4310-84-M**

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**[W-68223]**

## Wyoming; Application

May 31, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½' O.D. natural gas pipeline, a 4' by 6' meter house and related metering and dehydration facilities for the purpose of transporting natural gas across the following described public lands:

**Sixth Principal Meridian, Wyoming**

T. 23 N., R. 94 W.,
Sec. 4, lot 2, SW¼NE¼, W½SE¼.
T. 24 N., R. 94 W.,
Sec. 33, W½SE¼.

The proposed pipeline will transport natural gas from the No. 1–33 Red Desert Well located in the SE¼ of section 33, T. 24 N., R. 94 W., to a point of connection with an existing pipeline located in the SE¼ of section 4, T. 23 N., R. 94 W., all within Sweetwater County, Wyoming. The proposed 4' by 6' meter house and related metering and dehydration facilities are to be located entirely within the proposed 50' right-of-way in the W½SE¼ of section 33, T. 24 N., R. 94 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

**Harold G. Stinchcomb,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-17697 Filed 6-6-79; 8:45 am]

**BILLING CODE 4310-84-M**

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**[W-68203]**

## Wyoming; Application

May 31, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Phillips Petroleum Company of Bartlesville, Oklahoma filed an application for a right-of-way to construct a 4" I.D. buried pipeline for the purpose of transporting natural gas across the following described public lands:

**Sixth Principal Meridian, Wyoming**

T. 46 N., R. 77W.,
Sec. 3, SW¼SW¼;
Sec. 4, SE¼SE¼;
Sec. 9, NE¼NE¼.

The proposed pipeline to connect the Davis Oil Culp Draw Unit II Well #36 in section 9, will transport natural gas from a point in the NE¼NE¼, section 9, to a point in the SW¼SW¼, section 3, all within T. 46 N., R. 77 W., Johnson County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager,

Bureau of Land Managment, 951 Union Boulevard, Casper Wyoming 82601.

**Harold G. Stinchcomb,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-17696 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

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[W-62274]

### Wyoming; Application

May 31, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Kansas-Nebraska Natural Gas Company of Hastings, Nebraska filed an application to amend their existing right-of-way to construct an additional 6" pipeline within the existing 50 foot right-of-way for the purpose of transporting natural gas across the following described public lands:

**Sixth Principal Meridian, Wyoming**

T. 38 N., R. 91 W.,
Sec. 5, lot 1.
T. 39 N., R. 91 W.,
Sec. 32, SE¼SE¼.

The proposed additional pipeline will be located entirely within the existing 50' right-of-way 10' west and south of the existing 8" pipeline, and will serve the Long Butte #2-8 well located in the NE¼ of section 5, T. 38 N., R. 91 W., and the Long Butte #1-32 well located in the SE¼SE¼ of section 32, T. 39 N., R. 91 W., all within Fremont County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

**Harold G. Stinchcomb,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-17730 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

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[W-68222]

### Wyoming; Application

May 31, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½" O.D. natural gas pipeline, a 4' by 6' meter house and related metering and dehydration facilities for the purpose of transporting natural gas across the following described public lands:

**Sixth Principal Meridian, Wyoming**

T. 22 N., R. 94 W.,
Sec. 28, N½SW¼.

The proposed pipeline will transport natural gas from the Siberia Ridge Unit #11 Well located in the N½SW¼ of Section 28, to a point of connection with an existing pipeline located in the E½SW¼ of section 29, all within T. 22 N., R. 94 W., Sweetwater County, Wyoming. The proposed 4' by 6' meter house and related metering and dehydration facilities are to be located entirely within the proposed 50 foot right-of-way in the N½SW¼ of Section 28, T. 22 N., R. 94 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

**Harold G. Stinchcomb,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-17744 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-84-M

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## Bureau of Reclamation

### Contract Negotiations With the Central Utah Water Conservancy District and the Ute Indian Tribe; Intent to Negotiate a Contract for Repayment of Construction Costs of the Upalco Unit

The Department of the Interior, through the Bureau of Reclamation, intends to negotiate a contract with the Central Utah Water Conservancy District, Orem, Utah, and the Ute Indian Tribe, Fort Duchesne, Utah, for repayment of construction costs and operation and maintenance of the Upalco Unit of the Central Utah Project near Roosevelt, Utah. The contract will be written pursuant to the Reclamation Project Act of 1939 (53 Stat. 1187) and the Colorado River Storage Project Act of April 11, 1956 (70 Stat. 105).

The Upalco Unit of the Central Utah Project was authorized by the Colorado River Storage Project of 1956. The unit will store, regulate, and convey water primarily for irrigation to Indian and non-Indian lands. There will be some project water used for municipal and industrial purposes. It will also conserve and develop fish and wildlife resources, provide recreational opportunities, and control floods.

The irrigation water under the proposed contract will be made available to Indian and non-Indian farmers along the Lake Fork River in northeastern Utah. Municipal and industrial water will be made available to communities in the vicinity of Roosevelt, Utah.

Contractual arrangements will be negotiated with the Central Utah Water Conservancy District for repayment of an appropriate share of the project costs associated with irrigation and municipal and industrial water service. The repayment obligation associated with Indian irrigation water will be deferred as long as the lands involved remain in Indian ownership pursuant to the Colorado River Storage Project Act of April 11, 1956 (70 Stat. 105) which extends the Leavitt Act of July 1, 1932 (47 Stat. 504).

The public is invited to submit written comments on the form of the proposed contract not later than 30 days after the completed contract draft is declared to be available to the public.

For further information about scheduled meetings and copies of the proposed contract form, please contact LaVar Richman, Bureau of Reclamation, Central Utah Projects Office, P.O. Box 1338, Provo, Utah 84601, telephone (801) 374-8610. All meetings scheduled by the Bureau of Reclamation with the potential contractors for the purpose of discussing terms and conditions of the proposed contract shall be open to the general public as observers. Advance notice of such meetings shall be furnished to those parties requesting such notice from the office identified above.

All written correspondence concerning the proposed contract shall be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383) as amended.

Dated: May 31, 1979.

**R. Keith Higginson,**

*Commissioner of Reclamation.*

[FR Doc. 79-17425 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-09-M

## Fish and Wildlife Service

### Endangered Species Permit; Receipt of Application

The applicants listed below wish to be authorized to conduct the specified activity with the indicated Endangered Species:

Applicant: Ray L. Holmes, Rt. 5, Box 37 GC, Tahlequah, Oklahoma 74464—PRT 2-4224.

The applicant requests a permit to purchase in interstate commerce two white-eared pheasants (*Crossoptilon crossoptilon*) from Charles Sivelle, Dix Hills, New York, for enhancement of propagation.

Applicant: Oklahoma City Zoo, 2101 N.E. 50th, Oklahoma City, Oklahoma 73111—PRT 2-4227.

The applicant requests a permit to purchase in interstate commerce two barasingha (=swamp deer) (*Cervus duvaucelí*) from the Patio Ranch, San Antonio, Texas, for zoological exhibition and enhancement of propagation.

Applicant: Woodland Park Zoological Gardens, 5500 Phinney Ave. N., Seattle, Washington 98103—PRT 2-4234.

The applicant requests a permit to purchase in interstate commerce one female diana leaf monkey (*Cercopithecus diana*) from the El Paso Zoo, El Paso, Texas, for zoological exhibition and enhancement of propagation.

Humane care and treatment during transport, if applicable, has been indicated by the applicant.

Document and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, WPO, Washington, D.C. 20240.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address.

Dated: May 25, 1979.

**Donald G. Donahoo,**

*Chief, Permit Branch, Federal Wildlife Permit Office U.S. Fish and Wildlife Service.*

[FR Doc. 79-17633 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-55-M

### Endangered Species Permit; Receipt of Application

Applicant: Dr. Jorge K. Leong, National Marine Fisheries Service, 4700 Avenue U, Galveston, Texas 77550.

The applicant requests a permit to export gonadic and associated tissues of Atlantic ridley sea turtles (*Lepidochelys kempi*) to the University of Toronto, Canada, for scientific purposes. The tissues are from specimens already preserved at the Galveston Laboratory.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-4255. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: May 25, 1979.

**Donald G. Donahoo,**

*Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.*

[FR Doc. 79-17634 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-55-M

### Endangered Species Permit; Receipt of Application

Applicant: Indiana Bat Recovery Team, U.S. Fish & Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

The applicant requests an amendment to add the gray bat (*Myotis grisescens*) to his permit for scientific research with the Indiana bat (*Myotis sodalis*) which includes capturing for tagging, blood sampling, and release and to change the permittee to Regional Director, Region 6, U.S. Fish and Wildlife Service, Denver, Colorado.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-2174. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: May 24, 1979.

**Donald G. Donahoo,**

*Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.*

[FR Doc. 79-17635 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-55-M

### Endangered Species Permit; Receipt of Application

Applicant: Dr. Donald W. Linzey, Dept. of Biology, Virginia Polytechnic Institute and State University, Blacksburg, Virginia 20461.

The applicant requests a permit to capture Indiana bats *(Myotis sodalis)*, gray bats *(Myotis grisescens)*, and eastern cougars *(Felis concolor cougar)* for identification and release for scientific purposes.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-4244. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: May 24, 1979.

**Donald G. Donahoo,**

*Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.*

[FR Doc. 79-17636 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-55-M

## National Park Service

### Gateway National Recreation Area Advisory Commission Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Gateway National Recreation Area Advisory Commission will be held commencing at 10:00 a.m., Thursday, June 28, 1979, at Floyd Bennett Field, Building No. 272, Conference Room, Brooklyn, New York.

The Commission was established by Pub. L. 92-592 to meet and consult with the Secretary of the Interior on general

policies and specific matters relating to the development of Gateway National Recreation Area.

The members of the Commission are:

Marian Heiskell, Chairman, New York, New York.
Alexander J. D. Greeley, New York.
Paul Larson, Lakewood, New Jersey.
Orin Lehman, Albany, New York.
Gordon Litwin, Newark, New Jersey.
Terrence D. Moore, Newark, New Jersey.
Sheldon Pollack, New York, New York.
Peter M. Rivera, Bronx, New York.
Jose A. Sanchez, Jersey City, New Jersey.
Nathaniel Washington, Newark, New Jersey.

The matters to be discussed at this meeting include:

1. Advisory Commission subcommittees reports.
2. Old and new business.
3. Presentation of Gateway National Recreation Area Recreation Management Plan.
4. Presentation of Gateway National Recreation Area, Sandy Hook Unit, North Beach Alternatives.
5. Presentation of Gateway National Recreation Area summer programs.

The meeting will be open to the public. However, facilities and space to accommodate members of the public are limited, and persons will be accommodated on a first-come, first served basis. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Herbert S. Cables, Jr., Superintendent, Gateway National Recreation Area, Headquarters, Building 69, Floyd Bennett Field, Brooklyn, New York 11234, Area Code (212) 630–0353.

Minutes of the meeting will be available for inspection four weeks after the meeting at the Gateway National Recreation Area Headquarters Building.

Dated: June 1, 1979.

**Herbert S. Cables, Jr.,**

*Superintendent.*

[FR Doc. 79-17700 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-70-M

## Public Hearings Wilderness Study and General Management Plan Canaveral National Seashore, Fla.

Notice is hereby given in accordance with section 8 of the Act of January 3, 1975 (88 Stat. 2125 (16 U.S.C. 459j–7 et seq.)), and in accordance with Departmental procedures as identified in 43 CFR 19.5 that public hearings will be held at the following locations and times for the purpose of receiving comments and suggestions as to the suitability of lands within Canaveral National Seashore for designation as wilderness. Also, as part of the National Park Service's program for public participation in planning, these public hearings will also serve to receive comments and suggestions on the draft general management plan for the Canaveral National Seashore.

July 9, 1979, at 6:30 p.m.—New Smyrna Beach High School, 100 Quay Assisi, New Smyrna Beach, Florida.

July 10, 1979, at 6:30 p.m.—Titusville High School, 1850 South Washington Avenue, Titusville, Florida.

A packet containing a preliminary wilderness study report and accompanied general management plan may be obtained from the Superintendent, Canaveral National Seashore, P.O. Box 2583, Titusville, Florida 32780, telephone (305) 867–4675 or from the Regional Director, Southeast Region, National Park Service, 1895 Phoenix Boulevard, Atlanta, Georgia 30349, telephone (404) 996–2520 extension 253.

A map of the areas studied for their suitability or nonsuitability as wilderness is available for review at the locations noted above and in Room 1210 of the Department of the Interior Building at 18th and C Streets, N.W., Washington, D.C.

Interested individuals, representatives of organizations and public officials are invited to express their views in person at the aforementioned public hearings, provided they notify the Hearing Officer by July 6, 1979, of their desire to appear. Those not wishing to appear in person may submit written statements on the wilderness study report and the draft general management plan to the Hearing Officer for inclusion in the official record which will be held open for written statements until August 10, 1979. The Hearing Officer may be reached by writing or telephoning the Superintendent, Canaveral National Seashore.

Time limitations may make it necessary to limit the length of oral presentations and to restrict to one person the presentation made in behalf of an organization. An oral statement may, however, be supplemented by a more complete written statement that may be submitted to the Hearing Officer at the time of presentation of the oral statement. Written statements presented in person at the hearings will be considered for inclusion in the transcribed hearing record. However, all materials presented at the hearing shall be subject to a determination by the Hearing Officer that they are appropriate for inclusion in the hearing record. To the extent that time is available after presentation of oral statements by those who have given the required advance notice, the Hearing Officer will give others present an opportunity to be heard.

After an explanation of the preliminary wilderness study report and the draft general management plan by a representative of the National Park Service, the Hearing Officer, insofar as possible, will adhere to the following order in calling for the presentation of oral statements:

(1) Governor of the State or his representative.

(2) Members of Congress.

(3) Members of the State Legislature.

(4) Official representatives of the counties in which the National Seashore is located.

(5) Officials of other Federal Agencies or public bodies.

(6) Organizations in alphabetical order.

(7) Individuals in alphabetical order.

(8) Others not giving advance notice, to the extent there is remaining time.

Date: May 18, 1979.

**William J. Whalen,**

*Director, National Park Service.*

[FR Doc. 79-17699 Filed 6-6-79; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF JUSTICE

### Law Enforcement Assistance Administration

### Evaluation of Law-Related Education Program; Announcement of Solicitation for Grant Application

The National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP), Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice recently announced an evaluation of the OJJDP/NIJJDP Law-Related Education Program.

Applications will be considered from private or public agencies and organizations or individuals. The maximum funding level for this twelve (12) month effort is $400,000. The deadline date for receipt of applications has been extended from June 15, 1979 to July 6, 1979.

Potential applicants may obtain a copy of the solicitation by writing to: National Institute for Juvenile justice and Delinquency Prevention, U.S. Department of Justice, 633 Indiana Avenue, NW., Room 304, Washington,

D.C. 20531, attention: James C. Howell, or by calling area (202) 724–5893.

David D. West,

*Acting Associate Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 79–17703 Filed 6–6–79; 8:45 am]

BILLING CODE 4410–18–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[NASA Notice 79–58]**

### Systematic Review Guidelines

A. *Authorization.* Under the provisions of Section 3–402 of Executive Order 12065, the National Aeronautics and Space Administration authorizes the Archivist of the United States to apply these guidelines in the review of classified information over 20 years old unless otherwise provided in E, below. The guidelines apply only to information over which this agency has jurisdiction and which has been transferred to the General Services Administration and accessioned into the National Archives of the United States.

B. *Categories of Information Excepted from Automatic Declassification.* All classified information over 20 years old which is under the jurisdiction of this agency and which has become part of the National Archives of the United States is automatically declassified unless it falls into one of the categories described below:

1. All documents that are marked as containing Restricted Data as defined in 42 U.S.C. 2014. The declassification of these documents must be authorized by the Department of Energy as required by the Atomic Energy Act, as amended.

2. In view of the provisions of Section 3–402, Executive Order 12065, it is requested that documents related to the following types of information be referred to the NASA Security Classification Officer (para. C.) for review in order that their national security sensitivity may be determined.

a. The planning, negotiation and implementation of cooperative and reimbursable agreement and arrangements with aeronautical and space agencies of foreign governments for flight and groundbased projects.

b. Agreements and arrangements concerning the use of equipment, facilities, competence or sites of foreign agencies.

c. Development and execution of NASA and U.S. policies related to the space activities of the United Nations and other international organizations.

d. Development and execution of U.S. export and munitions control policies relating to space technology.

e. Intelligence methods, techniques, and sources.

f. The formulation and implementation of National Policy on intelligence or military operations.

C. *Agency Assistance to the National Archives.* This agency has designated Mr. Arnold K. Daue, Security Classification Manager (755–3400), to be the contact point for National Archives personnel to request assistance in identifying and separating documents and specific elements of information within the documents cited in paragraph B. 2. that are deemed to require continued protection. He and others who may be designated from time to time are authorized to declassify informatin exempted from declassification under B. 2. These persons will make recommendations to me for continued protection of the documents or categories of information requiring continued classification protection.

D. *Downgrading.* All Top Secret classified information over 20 years old which is under the jurisdiction of this agency and which has become part of the National Archives of the United States is automatically downgraded to Secret.

E. *Continuing Application of Earlier Guidelines.* The systematic review guidelines listed below which were previously authorized for use by the Archivist of the United States to declassify those NASA formal publications dated prior to January 1, 1969, in accordance with the requirements of E.O. 11652, shall continue to be applied in the review of such publications under this agency's jurisdiction.

1. Guideline dated July 6, 1973, signed by Willis H. Shapley, Acting Chairman, Security Classification Program Committee.

2. Guideline dated January 2, 1976, Subject: Statement Regarding Declassification Actions.

3. Guideline dated February 6, 1976, signed by Howard G. Maines, Chief, Classification Management and Industrial Security Branch.

4. Guideline dated July 26, 1978, signed by Arnold K. Daue, Security Classification Manager.

A. M. Lovelace,

*Acting Administrator.*

[FR Doc. 79–17613 Filed 6–6–79; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL TRANSPORTATION SAFETY BOARD

**[N–AR 79–23]**

### Accident Report, Safety Recommendations and Responses; Availability

*Pipeline Accident Report*

*Mid-America Pipeline System Liquefied Petroleum Gas Pipeline Rupture and Fire, Donnellson, Iowa, August 4, 1978 (NTSB–PAR–79–1).*—Copies of the National Transportation Safety Board's formal report on the investigation of this accident are now available to the public. The report, released May 25, shows that at 12:02 a.m., c.d.t., propane that had vaporized and spread widely from a ruptured 8-inch liquefied petroleum gas (LPG) pipeline owned by the Mid-America Pipeline System (MAPCO) was ignited by an unknown source in a rural area near Donnellson. The intense fire killed two persons and critically burned three others as they fled their homes; one of the critically burned persons later died. A farmhouse and six outbuildings were destroyed, and two adjacent homes were damaged. Before the fire burned out at 3:30 a.m., 3,750 barrels (157,500 gallons) burned and 75 acres of cornfields and woods were damaged.

The Safety Board determined that the probable cause of this accident was the failure of an 8-inch propane pipeline due to the combined stresses that were exerted on the pipeline when it was lowered 3 months before the accident and to a dent and gouge which had weakened the pipe. The dent and gouge had been incurred before the pipeline had been completed in 1962.

During its investigation of this accident the Safety Board found that MAPCO's emergency procedure plan was obsolete, and last November 20 recommended that MAPCO update its list of individuals who should be contacted to close specific valves in an emergency and institute a procedure to assure that the list is updated at least annually. The Board further urged MAPCO to conduct periodic training for public emergency response agencies along the route of its pipelines. (For recommendations P–78–66 and 67, see 43 FR 56112, November 30, 1978.)

As a result of its complete investigation, the Safety Board further recommended, on May 15, that MAPCO: Establish written procedures requiring company employees to insure that precautions are taken to eliminate excessive or sudden changes in elevation when lowering a section of

pipeline; emphasize to its personnel the importance of a thorough inspection, to minimize the occurrence of dents and gouges which could result in similar accidents; and determine by analytical means the stresses produced on pipe steel when projects require the lowering of a section, and design a safety factor to insure that these stresses will not affect the integrity of the line (P–79–2 through 5).

In a separate letter addressed to the American Petroleum Institute on May 18 the Safety Board urged that the trade association bring to the attention of member companies the need to use proper engineering techniques when it is necessary to relocate or lower a section of pipeline (P–79–7). Also on May 18 the Safety Board recommended that the American Iron and Steel Institute and the American Petroleum Institute undertake research for more stringent LPG pipeline specifications to minimize the effects of dents and gouges (P–79–8).

Additionally, this accident investigation prompted the Safety Board on May 15 to urge the Materials Transportation Bureau, U.S. Department of Transportation to reevaluate all recommendatons made by the Safety Board concernng LPG and to expedite those that require rulemaking (P–79–6). (See also 44 FR 30180, May 24, 1979.)

*Aviation Safety Recommendation Letters*

*A–79–35 through 39.*—Five additional recommendations were issued by the Safety Board on June 1 to the Federal Aviation Administration as a result of investigation into the crash of a National Airlines Boeing 727 during an approach to the Pensacola (Fla.) Regional Airport, May 8, 1978. The aircraft came to rest in 12 feet of water in Escambia Bay, about 3 miles off shore. The 52 passengers and six crewmembers successfully evacuated from the aircraft, but three passengers drowned. Two flight attendants and two passengers were injured seriously, and seven passengers were injured slightly.

There was no warning of the impact and no "preditching" preparation was made. Investigation also indicated that although decelerative forces were moderate, the cabin floor under the last two seat rows was destroyed and the aft tail cone access door (with its jumpseat) separated from the aircraft structure. The aft cabin was inundated almost immediately and water was about 4 feet deep in the forward cabin when the aircraft came to rest on the bottom of the bay. As the aircraft settled tail-first in the water, the occupants evacuated from six of the eight exits. The survivors experienced several difficulties with emergency equipment both during and after the evacuation.

The Safety Board found that the aircraft was not equipped, nor was it required to be equipped, with approved flotation-type seat cushions. Further, the survivors experienced numerous problems with locating, removing, unpacking, donning, and inflating lifevests, because they either did not have time to obtain them or they did not realize that the aircraft was in the water. Crewmembers either threw lifevests to passengers who were in the water or swam and carried lifevests to the passengers. In view of these findings, the Safety Board now recommends that FAA:

Issue an Air Carrier Operations Bulletin requesting Principal Operations Inspectors to insure that air carrier training programs include instructions to crewmembers with respect to the availability, capabilities, and use of flotable seat cushions on their aircraft. (A–79–35)

Amend 14 CFR 121.340 to require that all passenger-carrying air carrier aircraft be equipped with approved flotation-type seat cushions. (A–79–36)

Amend 14 CFR 121.571 to require that passengers be briefed on the location of approved flotation devices before each flight that requires the aircraft to pass over a large body of water during takeoff, departure, approach, or landing. (A–79–37)

Issue an Air Carrier Maintenance Bulletin instructing Maintenance Inspectors to emphasize to their assigned air carrier maintenance departments the need to maintain in a workable condition the closures of lifevest stowage pockets. (A–79–38)

Expedite the issuance of the Notice of Proposed Rule Making which addresses revisions to Technical Standard Order C13c (14 CFR 37.123) for lifevests. The revisions to this order should eliminate the difficulties identified in this accident with respect to the packaging, doning, and operation of lifevests by uninstructed subjects under stress. (A–79–39)

Each of the above recommendations is designated "Class II, Priority Action." Also in connection with this accident investigation, the Safety Board on May 1 issued four other Class II recommendations, Nos. A–79–27 through 30, to the FAA. Those recommendations concerned ground proximity warning systems. (See 44 FR 27510, May 10, 1979.)

*A–79–41.*—On May 27, within hours after the Safety Board began its investigation of the worst aviation disaster in American history—the American Airlines DC–10 accident at Chicago's O'Hare International Airport on May 25—the Board issued a "Class I, Urgent Action" recommendation to FAA:

Issue immediately an emergency Airworthiness Directive to inspect all pylon attach points on all DC–10 aircraft by approved inspection methods. (A–79–41)

The No. 1 engine and pylon separated from the aircraft during the takeoff roll, and the investigation has revealed the presence of a fatigue fracture of the No. 1 pylon forward thrust link attach bolt, part No. RA23001–8.

**Responses to Safety Recommendations**

*Aviation*

*A–78–53 through 55.*—The Federal Aviation Administration on May 23 responded to the Safety Board's comments of March 7 on FAA's initial response of last November 9 (43 FR 55021, November 24, 1979). The recommendations were issued following investigation of the fatal accident involving a Columbia Pacific Airlines Beechcraft model 99 which attained an excessively steep climb immediately after takeoff on February 10, 1978, from Richland (Wash.) Airport and crashed.

Referring to A–78–53, which recommended that an Airworthiness Directive be issued to require an immediate one-time inspection of the Beech 99 stabilizer trim system and its associated position-indicating and out-of-trim warning circuitry, the Board on March 7 said it agrees with FAA's fault analysis that two faults must occur to cause unwanted trim movement, but does not view the possibility of such occurrence as the major problem. Rather, the Board believes that a faulty position indicator or out-of-trim warning system alone can induce a pilot to initiate a takeoff with an undesirable trim setting. The Board said that while the flight test investigation of Beech 99, Serial No. U–126, did verify that the airplane is controllable under the full nose-up trim aft center of gravity loaded condition, it indicated such controllability was contingent upon immediate awareness and action on the part of the pilot. The February 10, 1978, accident shows that such expectations may not be realized. A review of aircraft service records did not reveal adverse service history of trim system components, but the Board's own investigation of only a few aircraft indicated a problem; therefore, faculty systems, particularly the trim-position-indicating portion, do exist and are potential accident causation factors. The Board believes that an Airworthiness Directive is justified and will continue to monitor the service history of the Beech 99 trim system.

In response, FAA has reevaluated the horizontal trim system on Beech 99

airplanes and current service history. FAA says it does not have the required evidence of an unsafe condition to support airworthiness action at this time. Advisory Circular No. 43–16, "General Aviation Airworthiness Alerts, Alert No. 9," dated April 1979 contains an item recommending rigid adherence to the manufacturer's inspection program.

Recommendation A–78–54 asked that an inspection be required at 2,000-hour intervals to ensure that the primary and secondary mode of the horizontal stabilizer actuator are capable of deflecting the stabilizer under specified airloads. The Board's previous comments apply regarding the controllability of the aircraft when grossly out of trim. Since slippage of the clutch will affect the operation of both the main and the standby trim modes, the Board continues to believe that a periodic in spection is justified and that the FAA should reconsider issuing a require ment for such action following development of the Beech Aircraft Company procedure. FAA's May 29 response notes that the manufacturer has devel oped a test procedure and expects to add this to the maintenance manual in approximately 90 days.

With respect to A–78–55, which recommended changing the Minimum Equipment List (MEL) to make an operable out-of-trim warning system mandatory for flight, the Board on March 7 questioned the rationale of the FAA's rejection. The Board said that if the out-of-trim warning system had been operational on the Beech Model 99 on February 19, 1978, the accident which took 17 lives would not have occurred. The simplicity of the design engineering of the system is such that even the most fla grant of violators of preflight inspection requirements would have been warned that their aircraft was out of trim for takeoff. Instead of re quiring this system, the MEL states that the aircraft may be flown with an inoperable out-of-trim warning, but that the pilot must visually check the position of the horizontal stabilizer. Although pilots are expected to preflight their aircraft and comply with the visual inspection provision of the MEL, pressures for on-time departures and failure to deplane at midstation stops can influence the thoroughness of such inspections. The Board does not believe that such a provision is an acceptable substitute.

FAA states in response to the Board's comments that a Master Minimum Equipment List (MMEL) for multiengine aircraft used in operations conducted under 14 CFR Part 135 is being developed. FAA will reevaluate all of the items on the current MEL to determine if they meet the re quirements of § 135.179. FAA expects to complete the Beech 99 MMEL in July 1979.

*A–78–77 and 78.*—FAA's letter of May 29 updates the action taken to implement these recommendations, developed during investigation of the Pacific Southwest Airlines Boeing 727–214/Cessna 172 midair collision last September 25 over San Diego, Calif.

In response to A–78–77, which recommended that FAA implement a Terminal Radar Service Area (TRSA) at Lindbergh Airport in San Diego, FAA states that a TRSA was implemented at that airport on April 19. In addition, the airport traffic control tower has been equipped with the following:

BRITE Alphanumerics—commissioned January 22, 1979.
Minimum Safe Altitude Warning and Conflict Alert Enhancements—commissioned February 14, 1979.

Recommendation A–78–78 asked FAA to review procedures at all airports which are used regularly by air carrier and general aviation aircraft to determine which other areas require either a terminal control area or a terminal radar service area and establish the appropriate one. FAA's comments refer to its response of last December 27 (44 FR 2441, Janu ary 11, 1979) informing the Board that FAA's program to expedite the on-going TRSA establishment program at all air carrier airports, where capability exists, was well underway and that a Notice of Proposed Rule Making concerning establishment of additional Terminal Control Areas (TCA) was to be issued prior to January 1, 1979. This proposal (Docket 18605) was issued January 4. FAA also provides a copy of its "Plan for Enhanced Safety of Flight Operations in the National Airspace System" which details FAA action to establish additional TCA's and TRSA's with the proposed implementation dates.

*Highway*

*H–78–65 and 66.*—American Trucking Associations, Inc., On May 25 responded to recommendations issued following investigation of the tractor-semitrailer/multiple-vehicle collision and override which oc curred on I–285, Atlanta, Ga., June 20, 1977. (See 43 FR 51150, November 2, 1978.) The recommendations asked ATA to emphasize education al programs at the State, regional, and national levels to bring about a better understanding of, and compliance with, the safety regulations and safety practices of truck operators, especially small carriers per forming for-hire or private carriage service (H–78–65), and to conduct a special study to determine if there are other techniques and programs which may be developed and utilized on an industrywide basis to improve driver knowledge and conduct (H–78–66).

ATA reports that last November 1 its Board of Directors adopted a resolution for renewed emphasis on various aspects of the trucking industry's safety program and to conduct the recommended special study leading to improved driver knowledge and conduct on the highways. Since then, the industry has been studying hours of service of drivers and this has resulted in information that will further ATA's efforts to assure that drivers and carriers have a better understanding of hours-of-service requirements and the reasons why compliance with the requirements is essential.

According to ATA, the industry has a national roadside inspection program which involves inspection of equipment and driver records to determine the condition of drivers and vehicles. Results of inspections are provided to motor carrier management for action to improve safety of operations. Additionally, in early 1979 ATA developed driver letters and a poster which are designed to remind drivers of the need to maintain a safe following distance and to be alert for stopped vehicles, especially in construction zones. (Copies of these materials are attached to ATA's letter.) They supplement other materials dealing with following and stopping distances already developed by ATA.

ATA reports that the Past National Chairman's Advisory Board of ATA's Council of Safety Supervisors will meet on June 26, 1979, in Boston to determine the elements of a special study program as recommended by the Safety Board and to plan additional activities that will be responsive to the resolution of the ATA Board of Directors and Safety Board recommendations.

*Railroad*

*R–78–28 through 31.*—The Association of American Railroads (AAR) on May 15 responded to the Safety Board's request of last November 24 for reconsideration of AAR's September 20 response (43 FR 52310, November 9, 1978) to recommendations issued following the Board's public hearing on derailments and the carriage of hazardous materials by rail. The hearings were held in early April 1978. The recommendations called on AAR to: Restructure the membership

and procedures of AAR's Committee on Tank Cars to eliminate conflicts of interest between shippers and the railroad industry in safety decisions (R–78–28); review and adopt all safety analysis methods that will strengthen the safety approval procedures within AAR Committees acting on hazardous materials tank car design and modification questions (R–78–29); implement emergency procedures for approval of facilities and locations for installation of shelf couplers and head shields on DOT 112A/114A tank cars (R–78–30); and develop and document a system to notify the Federal Railroad Administration of critical car components that exhibit critical failures annually and recommend regulatory action as required (R–78–31).

With respect to R–78–28, the Safety Board's November 24 letter referred to its safety effectiveness evaluation report, No. NTSB–SEE–78–2, which noted that an interlocking directorship exists on the AAR Tank Car Committee in that all members are either directly connected with carriers or shipper-related trade associations. The Board did not concur with AAR's statement of "no conflict of interest" within the Committee, citing, for example, the means to improve tank car safety through the use of shelf couplers was known for many years, yet there was no demonstrated action by the Committee to require coupler retrofitting. The Board said the inactivity strongly suggests a self-serving quality on the part of the Committee membership, a quality that does not lend itself to enhancing railroad safety, and strongly urged that AAR reassess its position of maintaining the present committee structure and procedures.

AAR's May 15 response states, "* * * we know of no conflict of interest between shippers and the railroad industry *in safety decisions.*" While recognizing that some conflict of interest between shippers and carriers does exist, AAR reemphasized that in matters relating to safety of transportation, it knows of no conflict of interest. In regard to retrofitting tank cars with shelf couplers, AAR calls attention to the hazardous materials regulation that mandated FRA-approved couplers on new tank cars. The AAR in 1974 and again in 1975 petitioned the U.S. Department of Transportation to add shelf couplers to the approved list. Both petitions were denied and in view of this denial, it was considered inappropriate to require retrofitting existing cars manufactured prior to the effective date of the regulation governing approved couplers on new cars. AAR concludes that since action of the Tank Car Committee is subject to the authority of the Mechanical Division General Committee and final authority in regard to hazardous materials regulations rests with DOT, there is no benefit to restructuring membership and procedures of the Tank Car Committee.

Regarding R–78–29 and in answer to the Safety Board's request for further information as to the safety analysis presently practiced prior to the approval of 112A and 114A tank car design or modification, AAR says that its Tank Car Committee has no *formal* safety analysis presently practiced prior to approval of tank car design or modifications. AAR notes that the Specification 112 and 114 tank cars were approved 20 years ago and doubts that formal safety analysis procedures were used extensively at that time. AAR states that if the Safety Board has a recommended safety analysis method that has demonstrated by acceptable methods that it will strengthen the safety approval procedures, the technical committees are willing to review and adopt it.

The Safety Board asked, referring to recommendation R–78–30, for further information regarding the feasibility of issuing emergency certification of appropriate repair track facilities so that the time frame for head shield retrofitting may be more readily met. AAR states, "* * * the industry feels very strongly that it is not proper to authorize repair track facilities to apply head shields." AAR says this was the industry position at the public hearing. The application of head shields requires specialized procedures which are not readily available on typical repair tracks, and AAR has no reason to believe that the existing time frame for head shield retrofitting will not be met.

With reference to R–78–31, the Safety Board sought further information regarding AAR's system of detecting components exhibiting high failure levels and relaying the findings to FRA. As examples, the Board asked: Is the information generally received from carriers' repair tracks, or from other sources, such as accident investigation developments? Also, at what point in failure levels is an "Early Warning" advisory issued? In response, AAR says it uses various systems to discover components exhibiting high failure rates. Major railroads may furnish failure reports, or a car owner may advise regarding failure of components on a particular series of cars, and at other times a report of one or two unusual incidents from a particular railroad would generate an inquiry to other railroads requesting information on similar failure experience. AAR notes that the Early Warning Advisory is issued at various failure levels depending upon individual circumstances. AAR states, "The complexities of component failure in railroad operating environment are such that analysis by competent industry personnel is preferable to an inflexible computer program which is designed to furnish safe or unsafe answers."

Note.—Single copies of the Safety Board's accident reports are available without charge, as long as limited supplies last. Copies of the recommendation letters issued by the Board, response letters and related correspondence are also available free of charge. All requests for copies must be in writing, identified by report or recommendation number. Address inquiries to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Multiple copies of accident reports may be purchased by mail from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

(Secs. 304(a)(2) and 307 of the Independent Safety Board Act of 1974 (Pub. L. 93–633, 88 Stat. 2169, 2172 (49 U.S.C. 1903, 1906)))

**Margaret L. Fisher,**

*Federal Register Liaison Officer.*

June 4, 1979.

[FR Doc. 79–17682 Filed 6–6–79; 8:45 am]

BILLING CODE 4910–58–M

## OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

### Trade Policy Staff Committee; Generalized System of Preferences (GSP) Subcommittee

*Summary.* The purposes of this notice are to (1) publish results of the review of proposals for changes in product coverage in the Generalized System of Preferences (GSP) (see part I below and Annexes I and II); and (2) publish notice of the deadline for receipt of petitions concerning GSP product eligibility for the next full review (see part II below).

I. *Results of Review of Petitions for Changes in Product Coverage.* This publication describes results of the 1978 annual review of petitions for changes in the list of imported articles eligible for duty-free treatment under the Generalized System of Preferences (GSP). The GSP is provided for in the Trade Act of 1974 (88 Stat. 2066–2071, 19 U.S.C. 2461–2465). The review was conducted pursuant to regulations codified at 15 CFR Part 2007. Results of the review were implemented as of March 1, 1979 by Executive Order No.

12124 of February 28, 1979 (44 FR 11729). The disposition of the petitions accepted for review by the Trade Policy Staff Committee (TPSC) is set forth in Annex I to this notice. Petitions that remain pending are listed in Annex II.

II. *Notice of Deadline for Receipt of Petitions Requesting Modification of the List of Articles Eligible for Duty-Free Treatment under the GSP.* Notice is hereby given that, in order to be considered in the next full review of products covered by the GSP, petitions for modification of the list of articles receiving duty-free treatment under the GSP must be received no later than the close of business on Tuesday, July 17, 1979. Petitioners should be guided in the preparation of their petitions by the GSP regulations codified at 15 CFR Part 2007 (42 FR 45532, September 9, 1977). Petitions should be submitted in twenty copies in English to the Chairman, GSP Subcommittee, 1800 G Street, N.W., Room 711 Washington, DC. 20506. Notice of petitions accepted for review by the GSP Subcommittee of the TPSC will be published in the **Federal Register**. Public hearings on all petitions accepted for review will be held during the week of September 24, 1979.

**William B. Kelly,**

*Chairman, Trade Policy Staff Committee.*

BILLING CODE 8190-01-M

Annex I

Case Reviews Completed

Petitions

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner | Action taken |
|---|---|---|---|---|
| A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences | | | | |
| 76-B-19 | 607.65 | Ferrotungsten and ferrosilicon tungsten | Samicorp, Inc. New York, N.Y. | Petition Granted |
| 77-B-3 | 136.30 | Garlic | Government of Chile | Petition Granted |
| 77-B-5 | 145.40 | Almonds: shelled | Government of Chile | Petition Denied |
| 77-B-11 | 152.76 | Fruit paste | Government of Chile | Petition Denied |
| 77-B-16 | 337.20 | Silk fabrics | Government of India | Petition Granted |
| 77-B-18 | 361.21 | Jute floor coverings | Government of Bangladesh | Petition Granted |
| 77-B-22 | 380.0001 | Men's or boy's lace wearing apparel, of cotton | Guatemala Export Promotion Centre Guatemala City, Guatemala | Petition Denied |
| 77-B-23 | 380.0203 | Men's or boys lace wearing apparel, of wool | do. | Petition Denied |
| 77-B-24 | 380.0566 (part) | Men's or boy's lace wearing apparel, of jute | Government of Bangladesh | Petition Denied |
| 77-B-25 | 380.0905 | Men's coats, of cotton, not over $4.00 each | Guatemala Export Promotion Centre Guatemala City Guatemala | Petition Denied |
| 77-B-26 | 380.1205 | Men's coats, of cotton, over $4.00 each | do. | Petition Denied |
| 77-B-27 | 380.1505 | Men's dressing gowns, of cotton, not over $2.50 each | do. | Petition Denied |
| 77-B-28 | 380.1805 | Men's dressing gowns, of cotton, over $2.50 each | do. | Petition Denied |
| 77-B-29 | 380.2705 | Men's shirts, of cotton | do. | Petition Denied |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner | Action taken |
|---|---|---|---|---|
| A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | | | | |
| 77-B-30 | 380.3305 | Men's vests, of cotton, not over $2.00 each | do. | Petition Denied |
| 77-B-31 | 380.3605 | Men's vests, of cotton, over $2.00 each | do. | Petition Denied |
| 77-B-32 | 380.3905 | Other men's or boy's wearing apparel, of cotton, NSPF | do. | Petition Denied |
| 77-B-33 | 380.6305 | Other men's or boy's wearing apparel, of wool, not over $4.00 per pound | Guatemala Export Promotion Centre Guatemala City, Guatemala | Petition Denied |
| 77-B-34 | 382.0001 | Women's or girl's lace wearing apparel, of cotton | do. | Petition Denied |
| 77-B-35 | 382.0202 | Women's or girl's lace wearing apparel, of wool | do. | Petition Denied |
| 77-B-36 | 382.1510 | Women's dressing gowns, of cotton, not over $2.50 each | do. | Petition Denied |
| 77-B-37 | 382.1810 | Women's dressing gowns, of cotton, over $2.50 each | do. | Petition Denied |
| 77-B-38 | 382.2710 | Women's vests, of cotton, not over $2.00 each | do. | Petition Denied |
| 77-B-39 | 382.3010 | Women's vests, of cotton, over $2.50 each | do. | Petition Denied |
| 77-B-40 | 382.3301 | Other women's wearing apparel, of cotton, NSPF | do. | Petition Denied |
| 77-B-41 | 382.6005 | Women's wearing apparel, of wool, not over $4.00 per pound | do. | Petition Denied |
| 77-B-42 | 382.6305 | Women's wearing apparel, of wool, over $4.00 per pound | do. | Petition Denied |
| 77-B-43 | 386.09 | Lace or net articles, NSPF | Caritas Bangladesh Dacca, Bangladesh | Petition Granted |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner | Action taken |
|---|---|---|---|---|
| | A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | | | |
| 77-B-46 | 387.32 | Other articles, not ornamented, of jute | do. | Petition Granted |
| 77-B-50 | 646.80 | Padlocks | Government of India | Petition Denied |
| 77-B-51 | 646.89 | Cabinet locks | do. | Petition Granted |
| 77-B-53 | 648.80 | Forged slip joint pliers under $6.00/dz. | do. | Petition Granted |
| 77-B-61 | 706.20 | Luggage and handbags in part of braid | Caritas Bangladesh Dacca, Bangladesh | Petition Denied |
| 77-B-62 | 706.2340 | Handbags of jute | Government of Bangladesh | Petition Denied |
| 77-B-66 | 732.18 | Bicycles | Government of India | Petition Denied |
| 77-B-67 | 732.30 | Bicycle frames | Government of Brazil Government of India | Petition Denied |
| 77-B-68 | 732.38 | Three speed hubs; caliper brakes free wheel sprockets | Government of Brazil Government of India | Petition Granted |
| 77-B-70 | 740.34 | Watch bracelets: valued not over $5 per dozen | Brite Industries Inc. Providence, R.I. | Petition Granted |
| 77-B-110 | 145.08 | Coconut meat | Government of Sri Lanka | Petition Granted |
| 77-B-111 | 382.0901 | Women's coats, of cotton, not over $4.00 each | Guatemala Export Promotion Centre Guatemala City, Guatemala | Petition Denied |
| TPSC Own motion | 601.54 | Tungsten ore | TPSC | Petition Granted |
| 78-1 | 112.20 | Sardines | Government of Peru | Petition Denied |
| 78-2 | 112.22 | Sardines | do. | Petition Denied |
| 78-3 | 114.15 | Crabmeat | Government of Colombia | Petition Denied |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner | Action taken |
|---|---|---|---|---|
| | A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | | | |
| 78-4 | 117.8560 | Cheeses over 25 cents per lb. | Nahariya Dairy Strauss, Ltd., Israel | Petition Withdrawn |
| | 117.8560 pt. | Smoked cream cheese | Government of Nicaragua | Petition Denied |
| 78-5 | 117.8570 | Other cheeses | Nahariya Dairy Strauss, Ltd., Israel | Petition Withdrawn |
| 78-6 | 121.50 | Pig and hog leather | Government of Yugoslavia | Petition Denied |
| 78-10 | 140.55 | Dried vegetables, nes | Deco-Swiss Dehydration Co., Ltd., Israel | Petition Granted |
| 78-11 | 140.75 | Other vegetable flour | Government of Colombia | Petition Denied |
| 78-12 | 141.60 | Pimientos | National Fruit & Vegetables Board, Portugal | Petition Denied |
| 78-13 | 141.66 | Tomatoes, other | do. Government of Argentina | Petition Denied |
| 78-15 | 152.65 | Papaya fruit paste | Government of Costa Rica | Petition Denied |
| 78-25 | 204.40 | Unlined jewelry boxes | Government of India Government of Colombia | Petition Granted |
| 78-26 | 204.45 | Lined jewelry boxes | Government of Colombia | Petition Denied |
| 78-27 | 240.23 | Other plywood | Government of Nicaragua | Petition Denied |
| 78-28 | 306.3172 | Other wool finer than 44s | Government of Argentina | Petition Denied |
| 78-33 | 316.60 | Cordage of man-made fibers | Tama Plastics Industries, Israel | Petition Denied |
| 78-34 | 336.10 | Woven fabrics of wool | Government of Bolivia | Petition Denied |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner | Action taken |
|---|---|---|---|---|
| | A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | | | |
| 78-35 | 336.60 | Other woven fabrics of wool | do. | Petition Denied |
| 78-37 | 345.30 | Knit fabrics of wool | do. | Petition Denied |
| 78-40 | 360.15 | Floor coverings over 66-2/3 cents per sq. yard | Government of Pakistan<br>Government of Lesotho | Petition Denied |
| 78-41 | 360.4825 | Other floor coverings of wool | Government of Bolivia | Petition Denied |
| 78-42 | 363.0110 | Sheets and pillow cases of cotton | Government of Lesotho | Petition Withdrawn |
| 78-44 | 363.0505 | Other bedding, of cotton | do. | Petition Withdrawn |
| 78-45 | 363.0530 | Other bedding, of vegetable fibers | do. | Petition Withdrawn |
| 78-46 | 363.10 | Blankets, of wool | Government of Lesotho<br>Government of Bolivia | Petition Denied |
| 78-47 | 363.2550 | Lace or net bedding | Government of Lesotho | Petition Withdrawn |
| 78-48 | 363.2590 | Other lace or net bedding | do. | Petition Withdrawn |
| 78-49 | 363.3005 | Other sheets and pillow cases, of cotton | do. | Petition Withdrawn |
| 78-50 | 363.35 | Other sheets and pillow cases, of vegetable fibers | do. | Petition Withdrawn |
| 78-51 | 363.5010 | Bedspreads, block-printed | do. | Petition Withdrawn |
| 78-52 | 363.5110 | Bedspreads, not block-printed | do. | Petition Withdrawn |
| 78-53 | 363.6010 | Other bedding of vegetable fibers NSPF | do. | Petition Withdrawn |
| 78-54 | 363.65 | Wool blankets | Government of Lesotho<br>Government of Bolivia | Petition Denied |
| 78-55 | 363.80 | Silk blankets | Government of Lesotho | Petition Withdrawn |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner | Action taken |
|---|---|---|---|---|
| | | A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | | |
| 78-56 | 363.8510 | Other bedding of man-made fibers | do. | Petition Withdrawn |
| 78-57 | 363.90 | Other bedding of other vegetable fibers | do. | Petition Withdrawn |
| 78-58 | 364.05 | Tapestry wall hangings | do. | Petition Withdrawn |
| 78-59 | 364.1610 | Other certified hand-loomed tapestries, of vegetable fibers | do. | Petition Withdrawn |
| 78-60 | 364.20 | Tapestries, of wool, not over $2.00 per pound | Government of Lesotho<br>Artesanias Titicaca, Ltda., Bolivia | Petition Denied |
| 78-61 | 364.22 | Tapestries, of wool, over $2.00 per pound | Artesanias Titicaca, Ltda., Bolivia<br>Government of Peru | Petition Denied |
| 78-62 | 365.0010 | Handmade lace furnishings | Government of Lesotho | Petition Withdrawn |
| 78-66 | 365.3195 | Other machine made lace furnishings | Government of Lesotho | Petition Withdrawn |
| 78-67 | 365.3595 | Lace furnishings made on a bobbinet machine | Government of Lesotho | Petition Denied |
| 78-68 | 365.4030 | Lace furnishings, of veg. fibers, made on a Nottingham machine | do. | Petition Withdrawn |
| 78-69 | 365.4595 | Other lace furnishings made on a Nottingham machine | do. | Petition Withdrawn |
| 78-70 | 365.5095 | Lace furnishings made on other machines | do. | Petition Withdrawn |
| 78-71 | 365.7095 | Other burnt-out lace furnishings | do. | Petition Denied |
| 78-72 | 365.7595 | Lace, nettings, etc. | do. | Petition Denied |
| 78-73 | 365.7810 | Other net furnishings, of cotton | Government of Lesotho | Petition Withdrawn |
| 78-74 | 365.80 | Damask tablecloths | do. | Petition Withdrawn |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner | Action Taken |
|---|---|---|---|---|
| | A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | | | |
| 78-75 | 365.81 | Curtains and drapes, of veg. fiber | do. | Petition Withdrawn |
| 78-76 | 365.83 | Towels and washcloths of veg. fiber | do. | Petition Withdrawn |
| 78-77 | 365.84 | Other net furnishing of veg. fiber, NES | do. | Petition Withdrawn |
| 78-78 | 365.8620 | Handloomed pillow covers of wool | Government of Bolivia Artesanias Titicaca, Ltda, Bolivia | Petition Denied |
| 78-79 | 366.12 | Curtains and drapes, pile or tufted of veg. fiber | Government of Lesotho | Petition Withdrawn |
| 78-80 | 366.1510 | Curtains and drapes handloomed | do. | Petition Withdrawn |
| 78-81 | 366.1540 | Other curtains and drapes | do. | Petition Withdrawn |
| 78-82 | 366.2710 | Towels, of cotton | do. | Petition Withdrawn |
| 78-83 | 366.30 | Towels, of veg fibers, not over 100 yarns/ sq. inch | do. | Petition Withdrawn |
| 78-84 | 366.33 | Towels of veg. fibers, over 100 but not over 120 yarns/ sq. yard | do. | Petition Withdrawn |
| 78-85 | 366.36 | Towels of veg. fibers, over 120 yards/sq. inch | do. | Petition Withdrawn |
| 78-86 | 366.39 | Towels, of veg. fiber, pile or tufted | do. | Petition Withdrawn |
| 78-87 | 366.4710 | Tablecloths and napkins, of cotton, other hand-loomed and folklore products | do. | Petition Withdrawn |
| 78-88 | 366.48 | Damask | do. | Petition Withdrawn |
| 78-89 | 366.51 | Damask tablecloths | do. | Petition Withdrawn |
| 78-90 | 366.54 | Damask napkins | do. | Petition Withdrawn |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

| ase No. | TSUS or TSUSA 1/ item No. | Article | Petitioner | Action Taken |
|---|---|---|---|---|
| A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | | | | |
| 78-94 | 374.25 | Embroidered hosiery, of wool | Government of Lesotho<br>Government of Bolivia | Petition Denied |
| 78-98 | 403.6065 | Other Amines or D(-)-Para-hydroxphenylglycine | Plantex/Ikapharm Ltd., Israel | Petition Denied |
| 77-99 | 406.02 | Dyes, sulfur black | Government of India | Petition Denied |
| 78-100 | 406.04 | Dyes, vat blue 1 | do. | Petition Denied |
| 78-101 | 406.10 | Various dyes | do. | Petition Denied |
| 78-102 | 406.50 | Various dyes | do. | Petition Denied |
| 78-103 | 406.60 | Various dyes | do. | Petition Denied |
| 78-104 | 406.70 | Various dyes | do. | Petition Denied |
| 78-105 | 407.8511 | Ampicillin and its salts | Plantex/Ikapharm Ltd., Israel | Petition Denied |
| 78-106 | 407.8517 or 407.8517 pt. | Amoxicillin trihydrate | do. | Petition Denied |
| 78-107 | 407.8523 or 407.8523 pt. | Sulfamethoxazole | do. | Petition Denied |
| 78-108 | 407.8527 or 407.8527 pt. | Trimethoprim | do. | Petition Denied |
| 78-109 | 407.8555 or 407.8555 pt. | Amitriptyline and Imipramine | do. | Petition Denied |
| 78-111 | 632.8420 | Unwrought alloys, other | Government of Yugoslavia | Petition Denied |
| 78-112 | 642.08 | Stainless steel wire strand | Government of Colombia | Petition Granted |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner | Action Taken |
|---|---|---|---|---|
| A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | | | | |
| 78-113 | 642.11 | Other roopes, cables, and cordage | do. | Petition Denied |
| 78-114 | 642.14 | Stainless steel rope | do. | Petiton Granted |
| 78-115 | 650.15 | Knives with rubber or plastic handles | Government of Colombia | Petition Granted |
| 78-116 | 650.21 | Other knives | do. | Petition Granted |
| 78-117 | 650.45 | Forks with rubber or plastic handles | Government of Malaysia | Petition Granted |
| 78-118 | 650.56 | Spoons and ladles of base metal | Government of Colombia<br>Government of Malaysia | Petition Granted |
| 78-120 | 685.34 | Tone arms | Government of Argentina | Petition Granted |
| 78-121 | 686.1035 | Variable resistors, other | Electromecaica Portuguesa Ltda., Portugal<br>Government of Malaysia | Petition Denied |
| 78-140 | 704.65 | Gloves of wool, certified folklore products | Government of Bolivia | Petition Denied |
| 78-142 | 706.06 | Luggage of leather | Government of Argentina<br>Government of Colombia | Petition Denied |
| 78-143 | 727.10 | Furniture of veg. fiber | Government of the Philippines<br>Government of Singapore | Petition Denied |
| 78-144 | 737.22 | Dolls | Government of Colombia<br>Government of Bolivia | Petition Denied |
| 78-145 | 737.2225 | Other dolls | Horne International, San Diego, California | Petition Denied |
| 78-146 | 760.48 | Lead pencils | Jerusalem Pencils, Ltd., Israel | Petition Withdrawn |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner | Action Taken |
|---|---|---|---|---|
| | | B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences | | |
| 77-9 | 603.45 | Materials, chief value tungsten | Refractory Metal Assn. Princeton, New Jersey | Petition Denied |
| | 629.25 | Tungsten: waste & scrap | do. | Petition Denied |
| | 629.26 | Tungsten: waste & scrap | do. | Petition Denied |
| | 649.43 | Cutting tools | do. | Petition Denied |
| | 649.48 | Dies | do. | Petition Denied |
| | 649.53 | Tooltips | do. | Petition Denied |
| 77-B-83 | 774.60 | Parts of footwear | American Footwear Industries Assoc. Arlington, Va. | Petition Denied |
| 77-B-86 | 791.24 | Cut leather uppers for shoes | do. | Petition Granted |
| 78-147 | 121.25 | Upholstery leather | Tanner's Council of America, N.Y., N.Y. | Petition Denied |
| 78-148 | 121.65 | Other leather | do. | Petition Denied |
| 78-149 | 653.9425 | Stainless steel cooking and kitchen ware | Metal Cookware Manufacturer's Association, Wash., D.C. | Petition Denied |
| 78-150 | 654.1015 | Aluminum cookware, not enameled | do. | Petition Denied |
| 78-151 | 654.1055 | Aluminum cookware, enameled | do. | Petition Denied |
| 78-152 | 708.0140 | Ophthalmic lenses | Optical Manufacturer's Assoc., Arlington, Va. | Petition Denied |
| 78-153 | 708.47 | Eyeglass frames | do. | Petition Denied |
| 78-154 | 708.53 | Firearm scopes | W.R. Weaver Company El Paso, Texas | Petition Denied |
| 78-155 | 722.1210 | 110 cameras | Nat'l. Assoc. of Photographic Manu., Inc. Harrison, New York | Petition Denied |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner | Action Taken |
|---|---|---|---|---|
| | B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences (con.) | | | |
| 78-156 | 722.1225 | Other cameras | do. | Petition Denied |
| 78-157 | 725.03 | Other, stringed musical instruments | United Furniture Workers of America N.Y., N.Y. | Petition Denied |
| 78-158 | 725.10 | Pipe organs | do. | Petition Denied |
| 78-159 | 730.37 | Shotguns, not valued over $5 each | Winchester Group New Haven, Ct. | Petition Denied |
| 78-160 | 730.39 | Shotguns, valued over $5 but not over $10 each | do. | Petition Denied |
| 78-161 | 730.41 | Shotguns, valued over $10 but not over $25 each | do. | Petition Denied |
| 78-162 | 730.43 | Shotguns, valued over $25 but not over $50 each | do. | Petition Denied |
| 78-163 | 730.45 | Shotguns, valued over $50 each | do. | Petition Denied |
| 78-164 | 731.05 | Fishing tackle: snelled hooks | American Fish. Tackle Manu. Assoc., Tackle Representative Assoc. | Petition Denied |
| 78-167 | 731.24 | Fishing reels, valued over $8.45 each | do. | Petition Denied |
| 78-168 | 731.26 | Parts of fishing reels | do. | Petition Denied |
| 78-169 | 731.65 | Artificial baits and flies | do. | Petition Granted |
| 78-170 | 734.20 | Game machines | Wolverine Toy Booneville, Ar. | Petition Denied |
| 78-171 | 737.80 | Other toys | do. | Petition Denied |
| 78-172 | 737.9550 | Percussion caps | Societe Pyragric, France | Petition Denied |
| 78-173 | 771.4212 | Polyvinyl chloride sheet and film | The Plastics Import Action Committee, Washington, D.C. | Petition Denied |
| 78-174 | 790.15 | Fly ribbons | Aeroxon Products, Inc. New Rochelle, N.Y. | Petition Denied |
| 78-175 | 791.76 | Leather wearing apparel | Nat'l. Outerwear & Sportswear Assoc., Inc. | Petition Granted |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex I (Continued)

Case Reviews Completed (Continued)

| ase No. | TSUS or TSUSA 1/ item No. | Article | Petitioner | Action Taken |
|---|---|---|---|---|
| C. Petitions to subdivide TSUS items currently designated as eligible articles for the Generalized System of Preferences | | | | |
| 78-176 | 206.98 | Wooden drapery hardware | Essex Mercantile Corp., Brooklyn, N.Y. | Petition Denied |
| 78-177 | 653.49 | Cast iron parts for stoves | Parker International Hollywood, Calif. | Petition Granted |
| 78-178 | 685.90 | Glass fuses | D & R Assoc., Inc. Boca Raton, Fl. | Petition Denied |
| 78-179 | 722.51 | Motorcycle tires | P.J. Co., Inc. Carson, Calif. | Petition Denied |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

Annex II

Case Reviews Pending

Petitions

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | | [The bracketed language in this list has been included only to clarify the scope of the numbered items which are being considered, and such language is not itself intended to describe articles which are under consideration] | |
| | | A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences. | |
| | | Vegetables, fresh, chilled, or frozen (but not reduced in size nor otherwise prepared or preserved): | |
| | | [Articles provided for in TSUS items 135.10 thru 137.80] | |
| | | Other: | |
| | | Fresh or chilled: | |
| 78-7 | 137.8660 | Jicamas and yams (genus Dioscorea) | Government of Colombia |
| | | Vegetables, fresh, chilled, or frozen, and cut, sliced or otherwise reduced in size (but not otherwise prepared or preserved): | |
| | | [Broccoli, cauliflower, and okra] | |
| | | Other: | |
| | | Frozen: | |
| | | [Asparagus] | |
| 78-8 | 138.5060 | Other | Government of Costa Rica |
| | or | or | |
| | 138.5060 pt. | Yucca | do. |
| | | Vegetables, dried, desiccated, or dehydrated, whether or not reduced in size or reduced to flour (but not otherwise prepared or preserved): | |
| | | Dried. desiccated, or dehydrated: | |
| | | [Beans, chickpeas or garbanzos, cowpeas, garlic, lentils, lupines, and onions] | |
| | | Peas: | |
| 78-9 | 140.45 | Split | Deco-Swiss Deyhdration Company, Ltd., Israel |
| | | Papayas, fresh, or prepared or preserved: | |
| 78-14 | 148.65 | Prepared or preserved | Government of Panama, Government of Peru |
| | | Brandy: | |
| | | [Pisco and singani] | |
| | | Other: | |
| | | In containers each holding not over 1 gallon: | |
| 78-16 | 168.27 pt. | Slivovitz, valued not over $9 per gallon | Government of Yugoslavia |
| 78-17 | 168.28 pt. | Slivovitz, valued over $9 per gallon | do. |
| | | In containers each holding over 1 gallon: | |
| 78-18 | 168.29 pt. | Slivovitz, valued not over $9 per gallon | do. |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202)

Annex II (Continued)

Case Reviews Pending (Continued)

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | | A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | |
| 78-19 | 168.90 | Imitations of brandy and other spirituous beverages | Government of Yugoslavia |
| 78-20 | 176.17 | Coconut oil | Trust Territory of the Pacific Islands, Government of Malaysia |
| | | Olive oil: | |
| | | [Rendered unfit for use as food] | |
| | | Other: | |
| 78-21 | 176.29 | Weighing with the immediate container under 40 pounds | Government of Argentina, Government of Turkey |
| | | Edible preparations not specially provided for (including prepared meals individually packaged): | |
| | | [Of gelatin] | |
| | | Other: | |
| | | [Containing over 5.5 percent by weight of butterfat and not packaged for retail sale] | |
| | | Other: | |
| | | [Wheat gluten] | |
| | | Other: | |
| | | [Provided for in TSUS items 950.16 or 950.23; pancake flour and other flour mixes; refrigerated (including frozen) doughs] | |
| 78-22 | 182.9888 or 182.9888 pt. | Other or Bioprotein of fish origin for human use | Government of Uruguay do. |
| | | Animal feeds, and ingredients therefor, not specially provided for: | |
| | | [Meat, including meat offal, not fit for human consumption] | |
| | | [Byproducts obtained from the milling of grains, mixed feeds, and mixed-feed ingredients] | |
| | | Other: | |
| | | [Animal feeds provided for in TSUS item 950.17] | |
| 78-23 | 184.7540 or 184.7540 pt. | Other or Hydrolized fish protein for livestock | do. do. |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202)

Annex II (Continued)

Case Reviews Pending (Continued)

| Case No. | TSUS or TSUSA 1/ Item No. | Article | Petitioner |
|---|---|---|---|
| | | A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.) | |
| 78-24 | 192.20 | Cut flowers, fresh; bouquets, wreaths, sprays, or similar articles made from such flowers or other fresh plant parts | Dominican Republic Center for Export Promotion, Dominican Republic, Government of Panama |
| | or 192.20 pt. | or Cut orchids, fresh | Government of Singapore |
| | | Cordage: Of vegetable fibers: Of hard (leaf) fibers: Not of stranded construction: [Binder twine and baler twine] | |
| 78-29 | 315.25 | Other | Exporcorda-Exportadora de Cordoarias, Lda, Portugal |
| | | Of stranded construction: | |
| 78-30 | 315.30 | Measuring under 3/16 inch in diameter | do. |
| | | Measuring 3/16 or over but under 3/4 inch in diameter: | |
| 78-31 | 315.40 | Of sisal, of henequen, or of sisal and henequen | do. |
| | | Measuring 3/4 inch or over in diameter: [Of abaca] | |
| 78-32 | 315.55 | Of sisal, of henequen, or of sisal and henequen | do. |
| | | Woven fabrics of silk: In chief value, but not wholly of silk: [Containing over 17 percent of wool by weight] Other: Not jacquard-figured: Degummed, bleached, or colored: [Subject to man-made fiber restraints] | |
| 78-36 | 337.7035 | Other | Government of India |
| | | Woven or knit fabrics (except pile or tufted fabrics), of textile materials, coated or filled, not specially provided for: [Oilcloths; tracing cloth; window hollands of cotton] Other: | |
| 78-38 | 356.25 | Of vegetable fibers | Floctex Industries, Ltd., Israel |
| 78-39 | 356.40 | Of man-made fibers | do. |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202)

Annex II (Continued)

Case Reviews Pending (Continued)

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | | **A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)** | |
| | | Lace or net bedding, whether or not ornamented, and other bedding, ornamented: | |
| | | Of vegetable fibers: | |
| | | Sheets and pillowcases (including bolster cases): | |
| | | [Of cotton] | |
| 78-43 | 363.02 | Other | Government of Colombia, Government of Lesotho |
| | | Lace or net furnishings, whether or not ornamented, and other furnishings, ornamented: | |
| | | Handmade-lace furnishings: | |
| 78-63 | 365.15 | Valued over $50 per pound | Government of Lesotho |
| | | Machine-made-lace furnishings: | |
| | | Made on a Leavers (including go-through) machine: | |
| | | 12 points or finer: | |
| | | [Of man-made fibers] | |
| 78-64 | 365.25 | Other | do. |
| | | Not 12 points or finer: | |
| 78-65 | 365.29 | Of vegetable fibers (except cotton), or of wool | do. |
| | | Burnt-out-lace furnishings: | |
| | | [Of man-made fibers] | |
| 78-71 | 365.7095 | Other | do. |
| | | Of lace, of netting, or of lace and netting, and made in designs or patterns formed wholly or in substantial part by joining (by applique or otherwise) machine-made, or handmade and machine-made, materials by handwork: | |
| | | [Of cotton] | |
| | | [Of man-made fibers] | |
| 78-72 | 365.7595 | Other | do. |
| | | Mufflers, scarves, shawls, and veils, all the foregoing of textile materials: | |
| | | [Lace or net articles, whether or not ornamented, and other articles, ornamented] | |
| | | Other articles, not ornamented: | |
| | | Of silk: | |
| | | Not knit: | |
| | | Weighing over 1 ounce per square yard and rectangular in shape: | |
| 78-91 | 372.60 | Valued over $5 per dozen | Government of India |
| 78-92 | 372.65 | Other | do. |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202)

Annex II

Case Reviews Pending (Continued)

| Case No. | TSUS or TSUSA 1/ item No. | Article | Petitioner |
|---|---|---|---|
| | | **A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)** | |
| | | Men's and boys' neckties, of textile materials: | |
| | | Not ornamented: | |
| | | Of silk: | |
| 78-93 | 373.22 | Not knit | Government of India |
| | | Other women's, girls', or infants' wearing apparel, not ornamented: | |
| | | Of silk: | |
| | | Not knit: | |
| | | [Subject to cotton restraints; subject to wool restraints; subject to man-made fiber restraints] | |
| 78-97 | 382.72 pt. 2/ | Other | do. |
| | | Fluorspar: | |
| 78-110 | 522.21 | Containing over 97% by weight of calcium fluoride | Fluorspar Company of Kenya, Ltd., Kenya |
| | | Parts of textile machinery: | |
| | | Needles for knitting machines: | |
| 78-119 | 670.58 | Latch needles | Government of Brazil |
| | | Electronic tubes (except X-ray tubes); photocells; transistors and other related electronic crystal components; mounted piezo-electric crystals; all the foregoing and parts thereof: | |
| | | [Television picture tubes] | |
| 78-122 | 687.60 | Other | Government of Argentina |
| | | Transistors and related electronic crystal components; mounted piezo-electric crystals: | |
| | | Transistors: | |
| 78-123 | 687.6025 | With a dissipation rating of less than 1 watt | Government of Malaysia, Government of Singapore |
| 78-124 | 687.6027 | With a dissipation rating of 1 watt or greater | Government of Malaysia, Government of Singapore |
| | | Integrated circuits: | |
| | | Monolithic: | |
| 78-125 | 687.6031 | Linear | Government of Malaysia |
| | | Other: | |
| | | Bipolar: | |
| 78-126 | 687.6036 | Transistor-transistor logic | do. |
| 78-127 | 687.6037 | Emitter coupled logic | do. |
| 78-128 | 687.6039 | Other | do. |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202)
2/ TSUSA items 382.7264 through 382.7282

Annex II (Continued)

Case Reviews Pending (Continued)

| Case No. | TSUS or TSUSA 1/ Item No. | Article | Petitioner |
|---|---|---|---|
| | | **A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences (con.)** | |
| | | Electronic tubes (except X-ray tubes), etc. (con.): | |
| | | Other (con.): | |
| | | Transistors and related electronic crystal components, etc. (con.): | |
| | | Integrated circuits (con.): | |
| | | Monolithic (con.): | |
| | | Other (con.): | |
| | | Other: | |
| 78-129 | 687.6043 | Metal oxide silicon | Government of Malaysia |
| 78-130 | 687.6046 | Other | do. |
| 78-131 | 687.6053 | Other | do. |
| | | Diodes and rectifiers: | |
| 78-132 | 687.6058 | Photo-sensitive | do. |
| 78-133 | 687.6059 | Zener | do. |
| 78-134 | 687.6061 | Microwave | do. |
| 78-135 | 687.6062 | Thyristors | do. |
| | | Other: | |
| 78-136 | 687.6066 | With a maximum current of 0.500 amperes or less | do. |
| 78-137 | 687.6067 | Other | do. |
| 78-138 | 687.6068 | Mounted piezo-electric crystals | Government of Singapore |
| | | Other, including parts not specially provided for: | |
| | | [Parts of semi-conductors] | |
| 78-139 | 687.6086 or 687.6086 pt. | Other or Electronic tube mounts | do. |
| | | Gloves of rubber or plastics: | |
| | | Seamless: | |
| 78-141 | 705.82 | Surgical and medical | The Ansell Corporation, Wilmington, DE., Government of Malaysia |

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202)

Annex II (Continued)

Case Reviews Pending (Continued)

| Case No. | TSUS or TSUSA 1/ Item No. | Article | Petitioner |
|---|---|---|---|
| | | B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences. | |
| | | Fishing reels and parts thereof: | |
| 78-165 | 731.20 | Reels: Valued not over $2.70 each | American Fishing Tackle Manufacturers Association, Chicago, IL., Tackle Representative Association Chicago, IL. |
| 78-166 | 731.22 | Valued over $2.70 but not over $8.45 each | American Fishing Tackle Manufacturers Association, Chicago, IL., Tackle Representative Association, Chicago, IL. |

[FR Doc. 79-17677 Filed 6-6-79; 8:45 am]

BILLING CODE 8190-01-C

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202)

## DEPARTMENT OF STATE

### Office of the Secretary

[Public Notice CM-8/203]

### Study Group 1 of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group 1 of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on June 27 and 28, 1979 at 10:00 a.m. in Room 511 of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. This Study Group deals with U.S. Government regulatory aspects of international telegraph and telephone operations and tariffs.

The Study Group will discuss international telecommunications questions relating to telegraph, telex, data transmission and leased channel services in order to develop U.S. positions to be taken at international CCITT meetings.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Requests for further information should be directed to Richard H. Howarth, State Department, Washington, D.C. 20520, telephone (202) 632-1007.

Dated: May 30, 1979.

**Richard H. Howarth,**

*Chairman, U.S. CCITT National Committee.*

[FR Doc. 79-17632 Filed 6-6-79; 8:45 am]

BILLING CODE 4710-07-M

## SUSQUEHANNA RIVER BASIN COMMISSION

### Public Hearing; Holtwood/York Haven Hydroelectric Projects

Notice is hereby given that the Susquehanna River Basin Commission will hold a public hearing as part of its review of the Holtwood and York Haven Hydroelectric Projects. The public hearing will begin at 1:00 PM on Thursday, July 12, 1979 at the Penn Harris Motor Inn, Susquehanna Room—Main Building, By Pass Routes 11 and 15, Camp Hill, PA.

The hearing is being held to receive pertinent testimony from the power companies and other interested parties concerning operation of the two projects and their impacts on the water and related resources of the basin. Each of the project owners and operators have applied to the Susquehanna River Basin Commission for approval to continue to use the basin's water resources for the operation of their respective facilities.

Holtwood Hydroelectric Project is owned by the Pennsylvania Power and Light Company (PP&L). The project is located on the Susquehanna River approximately 15 miles south of Lancaster, Pennsylvania and 22 miles southeast of York, Pennsylvania. The project, with an average effective capacity of 102,000 kw consists of a dam, powerhouse, reservoir and certain appurtenant electrical transmission facilities situated within the Counties of Lancaster and York, Pennsylvania. The reservoir formed by the dam extends upstream about 8 miles and has a surface area of about 2,400 acres.

York Haven Hydroelectric Project is owned by the York Haven Power Company, a wholly owned affiliate of Metrolitan Edison Company. The project is located on the Susquehanna River approximately 17 Miles downstream from Harrisburg, Pennsylvania. The project, with an average effective capacity of 19,000 kw consists of a dam, powerhouse, reservoir and certain appurtenant electrical transmission facilities situated within the Counties of Dauphin, Lancaster and York, Pennsylvania. The reservoir formed by the dam extends upstream about 4 miles and has a surface area of about 2,210 acres.

The principal areas of interest upon which the Commission is basis its review of both projects are:

I. Flood Control
II. Water Supply
  A. Minimum Flow Releases
  B. Authorized Diversions
III. Water Quality
IV. Recreation, Fish, and Wildlife
V. Cultural and Visual Amenities
VI. General Concerns
  A. Redevelopment Plans
  B. Debris Management
  C. Term of License

The application documents filed by the project sponsers are available for public inspection during regular business hours at the office of the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102. The offices are open to the public from 8:00 Am to 4:00 PM, Monday through Friday.

The hearing will be a legislative type of hearing under the SRBC rules of procedure governing review of projects to receive oral or written statements from interested individuals. Although the Commission will be asking questions of witnesses, this hearing is not a forum for cross examination by other participants.

Persons wishing to participate in the hearing may present oral and/or written testimony. Although not required, those wishing to testify in person are requested to contact the secretary to the Commission, in writing, prior to the hearing, at the above address.

Further information may be obtained by writing to the undersigned at the address of the Susquehanna River Basin Commission noted above or calling 717/238-0423.

Dated: June 1, 1979.

**Robert J. Bielo,**

*Executive Director.*

[FR Doc. 79-17704 Filed 6-6-79; 8:45 am]

BILLING CODE 7040-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-79-8]

### Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemptions received and of dispositions of petitions issued.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 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) and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Publication of this notice and any information it contains or omits is not 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: June 27, 1979.

**ADDRESSES:** Send comments on any petition in triplicate to:
Federal Aviation Administration, Office

of the chief Counsel, Attn: Rules Docket (AGC-24), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 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-24), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, D.C. 20591; telephone (202) 426-3644.

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, D.C., on June 1, 1979.

**Edward P. Faberman,**

*Acting Assistant Chief Counsel, Regulations and Enforcement Division.*

**Petitions for Exemptions**

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| None during the period from May 28 through June 1, 1979. | | | |

**Dispositions of Petitions for Exemptions**

| Docket No. | Petitioner | Regulations affected | Description of relief sought—disposition |
|---|---|---|---|
| 19107 | Gem State Airlines | 14 CFR 121.291 | To permit petitioner to place into passenger carrying service a Convair 580 with 50 passenger seats without conducting an emergency evacuation demonstration. *Granted 5/25/79.* |
| 19151 | Robert Bradley Knapp | 14 CFR 135.243(a) | To allow Mr. Knapp to serve as pilot in command for Air Hawaii Corporation without having an ATPC. *Granted 5/25/79.* |
| 19172 | Delta Air Lines | 14 CFR 121.291 | To allow petitioner to begin L-1011-385-3 operations with 241 passenger Seats without first conducting a full seating capacity emergency evacuation demonstration. *Granted 5/25/79.* |
| 18743 | Charles F. Willis III | 14 CFR Part 121 | Petitioner requests amendment of Exemption No. 2683A to include B-707-320B aircraft N402PA among those operated for the carriage of refugees. *Granted 5/25/79.* |
| 18900 | British Midland Airways, Ltd | 14 CFR Part 63 | To amend Exemption No. 2704, as amended, to include an additional airman in the appendix so that he may serve on leased, U.S. registered B-707 aircraft N448M. *Granted 5/25/79.* |
| 18912 | Transasian Airlines | 14 CFR Parts 21, 61 | To amend Exemption No. 2714 to include additional airmen in the appendix so that they may serve as flight crewmembers on U.S.-registered B-707-320B aircraft N762TB leased from West Bay Leasing, Inc./Euro-Eastern World Transport Holding, Ltd. *Granted 5/25/79.* |

[FR Doc. 79-17651 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-13-M

**[Summary Notice No. PE-79-7A]**

## Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Correction.

**SUMMARY:** On May 31, 1979, the FAA published a notice summarizing petitions for exemption filed with the FAA (44 FR 31340). That notice incorrectly stated that the period for submitting comments on the petition closed on June 14, 1979. This notice corrects that error.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before: June 20, 1979.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Petition Docket No.———, 800 Independence Avenue, SW., Washington, D.C. 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-24), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, D.C. 20591; telephone (202) 426-3644.

**SUPPLEMENTARY INFORMATION:** Summary Notice No. PE-79-7 (44 FR 31340; May 31, 1979) inadvertently and incorrrectly stated that the comment period closed June 14, 1979. Under 14 CFR 11.27(c), comments on petitions for exemptions may be filed within 20 days after the summary is published in the **Federal Register.** Thus, the comment period should close on June 20, 1979.

*The Correction*

Accordingly, the comment period prescribed in Summary Notice No. PE-79-7 is hereby corrected to allow submission of comments on the petitions on and before June 20, 1979.

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, D.C., on June 1, 1979.

**Edward P. Faberman,**

*Acting Assistant Chief Counsel, Regulations and Enforcement Division.*

[FR Doc. 79-17652 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-13-M

## Federal Railroad Administration

## Minority Business Resource Center Advisory Committee; Public Availability of Report of Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. II, 1972) and OMB Circular A-63 of March 27, 1974 notice is hereby given of the availability of the report of the closed meeting of the Minority Business Resource Center Advisory Committee held on April 13, 1979 at the Airport Hilton Hotel in Chicago, Illinois.

Copies of the report have been filed and are available for public inspection at two locations. They are:

Library of Congress, Federal Advisory Committee Deck, Exchange and Gift Division, Washington, D.C. 20541,
and
Department of Transportation, Federal Railroad Administration, Minority Business Resource Center, Room PL 413, 400 7th Street SW., Washington, D.C. 20590.

General information pertaining to the meeting may be obtained from Harvey C. Jones, Advisory Committee Staff Advisor, Department of Transportation, Federal Railroad Administration, Minority Business Resource Center, 400 7th Street SW., Washington, D.C. 20590, telephone (202) 472-2449.

Issued in Washington, D.C. on May 1, 1979.

**Kenneth E. Bolton,**

*Director, Minority Business Resource Center.*

[FR Doc. 79-17716 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-06-M

## National Highway Traffic Safety Administration

**[Docket No. IP78-9; Notice 2]**

## General Motors Corp.; Grant of Petition for Inconsequential Noncompliance

This notice grants the petition by General Motors Corp. of Warren, Michigan ("GM" herein) to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.208, Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection*, on the basis that it is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on November 27, 1978, and an opportunity afforded for comment (43 FR 55304).

Pursuant to paragraph S4.1.2.3.1 of Motor Vehicle Safety Standard No. 208, GM manufactures passenger cars with seat belt assemblies that conform with the requirement of Motor Vehicle Safety Standard No. 209. It has discovered that belt assemblies used in 44 Chevrolet Impala and Caprice vehicles manufactured in early April 1978 contain belts that do not comply with S4.1(k) of Standard No. 209 in that they are incorrectly marked as having been manufactured in 1977 when, in fact, they were manufactured in 1978. GM argued that this noncompliance is inconsequential as it relates to motor vehicle safety because it has no effect upon any aspect of performance of the seat belt assembly. In the event of a recall of seat belt assemblies, GM's records enable it to identify the 44 vehicles which contain the incorrectly labeled belts.

No comments were received on the petition. NHTSA concurs with GM's position that the noncompliance is only a labeling error, and does not affect performance of the seat belt assembly. Accordingly, it has been determined that the noncompliance with Standards No. 209 herein described is inconsequential as it relates to motor vehicle safety, and the petition by General Motors Corp. is hereby granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on May 29, 1979.

**Michael M. Finkelstein,**

*Associate Administrator for Rulemaking.*

[FR Doc. 79-17312 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-59-M

## Highway Safety Program; Amendment of Qualified Products List of Evidential Breath Measurement Devices

**AGENCY:** National Highway Traffic Safety Administration. (NHTSA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice amends the Qualified Products List for devices which have been found to qualify under the Standard for Devices to Measure Breath Alcohol (38 FR 30459).

**EFFECTIVE DATE:** June 7, 1979.

**ADDRESS:** Administrator, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590.

**FOR FURTHER INFORMATION CONTACT:** John Moulden, Office of Driver and Pedestrian Programs, Traffic Safety Programs, NHTSA, Washington, D.C. 20590, 202-426-0078.

**SUPPLEMENTARY INFORMATION:** The Qualified Products List of Evidential Breath Measurement Devices was initially issued November 21, 1974 (39 FR 41399), and was most recently amended June 26, 1978 (43 FR 27630). Devices on the list may be purchased with Federal funds under the Highway Safety Act, Pub. L. 89-564, 80 Stat. 731, 73 U.S.C. 402, 403.

In accordance with the Breath Measurement Standard, semi-annual testing of devices was conducted during August 1978. At this testing two devices, not previously on the Qualified Products List, the Intoxilyzer 4011A 27-101000 with fixed filter calibration option and the Auto-Intoximeter AI-1000 met all performances requirements.

Also, in accordance with the Breath Measurement Standard, the 1979 semi-annual qualification testing of devices was conducted during the months of February and March 1979. At the testing, another device, the Intoxilyzer 4011AS, also met all the performance requirements, including the requirements of the Standard for Mobile Breath Testers.

The Qualified Products List is therefore amended as follows:

### Qualified Products List

The qualified products meeting all performance requirements, including those for Mobile Evidential Breath Testers, are as follows, listed alphabetically by manufacturer:

**Device and Manufacturer**

1. Alert J3AD Breath Tester (battery powered), Alcohol Countermeasure Systems, Port Huron, Michigan (formerly Borg-Warner Corp., Des Plaines, Illinois).
2. Alert J3AC, Alcohol Countermeasure Systems, Port Huron, Michigan (formerly Borg-Warner Corp., Des Plaines, Illinois).
3. S-11 Breath Tester, Alcohol Countermeasure Systems, Port Huron, Michigan (formerly Borg-Warner Corp., Des Plaines, Illinois).
4. Intoxilyzer Model 4011, CMI, Inc., Minturn, Colorado.
5. Intoxilyzer Model 4011A, CMI, Inc., Minturn, Colorado.
6. Intoxilyzer 4011A 27-10100, CMI, Inc., Minturn, Colorado.
7. Intoxilyzer 4011A 27-10100 with fixed filter calibration option, CMI, Inc., Minturn, Colorado.
8. Intoxilyzer 4011AS, CMI, Inc., Minturn, Colorado.
9. Alco-limiter, Energetics Science, Inc., Elmsford, New York.
10. Auto-Intoximeter AI-1000, Intoximeters, Inc., St. Louis, Missouri.
11. Gas Chromatograph Intoximeter Mark IV, Intoximeters, Inc., St. Louis, Missouri.
12. Gas Chromatograph Mark IV A, Intoximeters, Inc., St. Louis, Missouri.
13. Mark II Gas Chromatograph, Intoximeters, Inc., St. Louis, Missouri.
14. Alcolmeter AE-D1, Lion Laboratories, Ltd., Cardiff, Wales, United Kingdom.
15. Intoxilyzer Model 4011, Omicron Systems Corp., Palo Alto, California.
16. Breathalyzer Models 900A, 1000, Smith & Wesson Electronics Co., Springfield, Massachusetts.

17. Roadside Breath Tester, U.S. Department of Transportation, Washington, D.C.

The qualified products meeting all performance requirements, excluding those for Mobile Evidential Breath Testers, are as follows, listed alphabetically by manufacturer:

**Device and Manufacturer**

1. Alco-Tector Model 500, Decatur Electronics, Decatur, Illinois.

2. Auto-Intoximeter AI 1, Intoximeters, Inc., St. Louis, Missouri.

3. Photo-Electronics Intoximeter, Intoximeters, Inc., St. Louis, Missouri.

4. Alco-Analyzer Model 1000, Luckey Laboratories, Inc., San Bernardino, California.

U.S.C. 402, 403.)

Issued: June 1, 1979.

**K. W. Heathington,**

*Associate Administrator, Traffic Safety Programs.*

[FR Doc. 79-17599 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-59-M

## Withdrawal of Initial Defect Determination and Cancellation of Meeting

On April 26, 1979, Lynn L. Bradford, Acting Associate Administrator for Enforcement, NHTSA, notified Ford Motor Company of his initial determination of a safety-related defect in the fuel systems of 1970–1973 Ford Mavericks and 1971–1973 Mercury Comets. A public meeting concerning the Maverick–Comet fuel systems was scheduled for May 29, 1979 and subsequently postponed until July 13, 1979. (44 FR 32060, June 4, 1979).

Thereafter, evidence that Mavericks whose fuel systems has caught fire during crash testing conducted during NHTSA's investigation had previously undergone major repairs came to my attention. This information in Mr. Bradford's view undermines the initial determination. When this evidence was brought to my attention by Mr. Bradford, I carefully considered it and agreed with him that it cast doubt upon the initial determination, since it is possible that the failure of the fuel system can be attributable to changes in the configuration or strength of the system resulting from the prior repairs. Accordingly, I promptly notified Ford Motor Company, through a letter dated May 31, 1979, that the initial defect determination regarding the 1970–73 Ford Maverick and 1971–73 Mercury Comet was withdrawn. I also advised Ford Motor Company that the investigation of the alleged defect was continuing.

The public meeting scheduled for July 13, 1979 concerning the alleged defect is hereby cancelled.

Copies of all crach test reports and other materials considered in reaching the initial defect determination are available for review in the NHTSA Technical Reference Division, Room 5108, Nassif Building, Washington, D.C. 20590, between 7:45 a.m. and 4:15 p.m.

Issued on May 31, 1979.

**Joan Claybrook,**

*Administrator.*

[FR Doc. 79-17590 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-59-M

## VETERANS ADMINISTRATION

## Replacement Medical Center; Portland, Oreg.; Availability of Draft Environmental Impact Statement

Notice is hereby given that a document entitled "Draft Environmental Impact Statement for the Veterans Administration Replacement Medical Center, Portland, Oregon," dated May 1979, has been prepared as required by the National Environmental Policy Act of 1969.

The two viable alternate locations for the Medical Center are the present 25 acre Portland VA Medical Center site and the Emanuel site, an 18 acre parcel adjacent to the Emanuel Hospital, Portland, Oregon. The Medical Center will have 600 hospital beds and the necessary outpatient and support functions. The facility will replace the outmoded Veterans Administration Medical Center on Terwilliger Boulevard, Portland, Oregon.

The Draft Statement discusses the environmental impact of the Replacement Medical Center for the viable alternatives including "No Action". The document is being placed for public examination in the Veterans Administration office in Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, Director, Environmental Affairs Office (004A), Room 1018, Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C., (202–389–2526).

Single copies of the Draft Statement may be obtained on request to: Director, Environmental Affairs Office (004A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

By direction of the Administrator.

Dated: May 22, 1979.

**Maury S. Cralle, Jr.,**

*Assistant Deputy Administrator for Financial Management and Construction.*

[FR Doc. 79-17650 Filed 6-6-79; 8:45 am]

BILLING CODE 8320-01-M

## INTERSTATE COMMERCE COMMISSION

**[Notice No. 88]**

## Motor Carrier Temporary Authority Applications

May 24, 1979.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

NOTE: All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

**Motor Carriers of Property**

MC 87928 (Sub-50TA), filed April 9, 1979. Applicant: AUTOMOBILE TRANSPORT, INC., 36555 Michigan

Avenue, Wayne, MI 48184. Representative: Eugene C. Ewald, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. *New automobiles and trucks,* in secondary movements, in truckaway service, from Naperville, IL to points in IA, MN, MO, WI and Overland Park, KS, for 180 days. An underlying ETA seeks 90 days Authority. Supporting Shipper(s) Nissan Motor Corporation, 18501 South Figueroa Street, Carson, CA 90348. Send protests to: C. R. Flemming, D/S, ICC, 225 Federal Building, Lansing, MI 48933.

MC 100449 (Sub-109TA), filed March 7, 1979. Applicant: MALLINGER TRUCK LINE, INC., R.R. No. 4, Fort Dodge, IA 50501. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Foodstuffs,* except in bulk, from the facilities of Interstate Foods Corp. at Chicago, IL, to points in TX, TN, and KS , for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Interstate Foods Corp., 3800 Morgan, Chicago, IL 60609. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 100449 (Sub-110TA), filed March 29, 1979. Applicant: MALLINGER TRUCK LINE, INC., R.R. #4, Fort Dodge, IA 50501. Representative: Thomas E. Leahy, 1980 Financial Center, Des Moines, IA 50309. *Plastic products,* except in bulk, from the facilities of Western Plastics Corporation at or near Mankato, MN to points In IL, IN, IA, KS, MO, MT, TX, NE, ND, SD, OK, WI and CO, and equipment materials and supplies used in the manufacture of plastic products, except commodities in bulk, from points in TX to Mankato, MN for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Western Plastics Corporation, 1905 First Ave., P.O. Box 3143, Mankato, MN 56001. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 103798 (Sub-38TA), filed April 5, 1979. Applicant: MARTEN TRANSPORT, LTD., Route 3, Mondovi, WI 54755. Representative: Robert S. Lee, 1000 First National Bank Building, Minneapolis, MN 55402. *Meat and packinghouse products* from the plantsite and storage facilities of Wilson Foods Corporation at Albert, Lea, MN to points in CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Wilson Foods Corporation, 4545 Lincoln Boulevard, Oklahoma City, OK 73105. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 112989 (Sub-97TA), filed April 12, 1979. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr., 85647 Highway 99 South, Eugene, OR 97405. *Iron and Steel Coils* from Detroit, MI to Los Angeles and San Francisco, CA; Portland, OR and Seattle, WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): McLouth Steel Corporation, 300 S. Livernois, Detroit, MI 48209. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 118989 (Sub-215TA), filed March 6, 1979. Applicant: CONTAINER TRANSIT, INC., 5223 S. 9th St., Milwaukee, WI 53221. Representative: Rolland K. Draves, "Same address as applicant". *Paper products,* from Green Bay, WI to points in IL, IN, MI, OH, KY, WV, & PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): American Can Co., P.O. Box 702, Neenah, WI 54956. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 119789 (Sub-584TA), filed April 4, 1979. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr., address same as above. *Liquid plastic, in containers, in mechanically refrigerated equipment,* from Houston, TX and Geismar, LA to Atlanta, GA; Seattle, WA; Portland, OR; Sacramento, CA; Minneapolis, MN; Niles, MI; St. Louis, MO; Pittsburgh, PA; and Buffalo, NY for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Foam Systems Co., P.O. Box 5347, Riverside, CA 92507. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 119789 (Sub-585TA), filed April 16, 1979. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr., address same as above. *Such commodities as are dealt in by wholesale, retail and chain grocery stores, hardware, drug stores and materials and supplies (except in bulk) used in the manufacture therefore,* Between Canton, OH on the one hand, and Dallas, TX and Los Angeles, CA on the other for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Boyle-Midway, Division of American Home Products Corporation, 685 Third Avenue, New York, NY 10017. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 126079 (Sub-8TA), filed March 20, 1979. Applicant: STOUT CORPORATION, 1200 West 200 South, P.O. Box 186, Provo, UT 84601. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. Contract Carrier, irregular routes, (1) *roofing products, insulation products, wallboard, and panel electric wallboard* and (2) *materials, equipment and supplies* used in the manufactuer, distribution and installation of the commodities described in (1) from CA, OR, CO, WA, Cody, WY, Albuquerque, NM, Phoenix and Nogales, AZ, to UT. (3) *Insulation products and materials, equipment and supplies* used in the manufacturer, distribution and installation thereof from Salt Lake County, UT to Phoenix, AZ, for 180 days. Restricted to a transportation service to be performed under a continuing contract or contracts with P–K Supply Company Division of Bird & Son, Inc. An underlying ETA seeks 90 days authority. Supporting shipper(s): Bird & Son, Inc., Washington Street, East Walpole, MA 12032. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake city, UT 84138.

MC 136008 (Sub-104TA), filed April 6, 1979. Applicant: JOE BROWN COMPANY, INC., 20 Third Street N.E., Ardmore OK 73401. Representative: John Tipsword, P.O. Box 6210. Moore, OK 73153. *Feed grade phosphates,* in bulk, in tank vehicles, (1) from Houston, TX, to OK, KS, AR, & MO; and (2) from Joplin, MO, to AR, KS, OK, & TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hooker Chemical Corporation, P.O. Box 4289, Houston, TX 77210. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240 Old Post Office & Court House Bld., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 138299 (Sub-11TA), filed April 16, 1979. Applicant: TRAILS TRUCKING, INC., 1825 De La Cruz Blvd., Santa Clara, CA 95050. Representative: W. J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Contract carrier:* irregular routes: Fibreboard building board, from Santa Clara, CA to points in AZ, CA, ID, MT, NV, NM, OR, UT, WA, WY, and El Paso, TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Fiberglas Corporation, Fiberglas Tower, Toledo, OH 43659. Send protests to: District Supervisor, 211

Main, Suite 500, San Francisco, CA 94105.

MC 138469 (Sub-144TA), filed April 9, 1979. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Daniel O. Hands, Attorney at Law, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. (1) *Fireplaces, fireplace parts, fireplace accessories,* and (2) *equipment, materials and supplies used in the manufacture and distribution of fireplaces,* from the facilities of Heatilator Fireplaces, Division of Vega Industries, Inc., at or near Centerville and Mt. Pleasant, IA, to points in the States of AL, AZ, AR, CA, CO, FL, GA, ID, LA, MS, MT, NV, NM, NC, OK, OR, SC, TN, TX, UT, WA, & WY, restricted to traffic originating at the named origins, for 180 days. Supporting Shipper(s): Heatilator Fireplaces, Division of Vega Industries, Inc., P.O. Box 409, Mt. Pleasant, IA 52641. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240 Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 139638 (Sub-7TA), filed April 6, 1979. Applicant: N. L. MONTGOMERY, INC., P.O. Box 626, Rocky Mount, VA 24151. Representative: W. T. Jones, President, same address as above. *Lumber and lumber mill products* from points in VA on the one hand, and on the other, points in NC for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Epperson Layers Lumber Co., Ararat, VA 24053, Brown-Bledsoe Lumber Company, P.O. Box 100098, Greensboro, N.C. 27404, S. W. Barnes, Inc., P.O. Box 85, Crozet, VA 22932, Leisure Land & Timber Co., Inc., P.O. Box 3763, Martinsville, VA 24112. Send protests to: Paul D. Collins, DS, ICC, Room 10–502 Federal Bldg., 400 N. 8th St. Richmond, VA 23240.

MC 140829 (Sub-234TA), filed April 16, 1979. Applicant: CARGO, INC., P.O. Box 206, U.S. Hwy 20, Sioux City, IA 51102. Representative: William J. Hanlon, Esq., 55 Madison Ave., Morristown, NJ 07960. *General commodities (except Classes A & B explosives, commodities in bulk, in tank vehicles),* from the facilities of West Coast Shippers Association in the commercial zones of New York City, NY and Philadelphia, PA to points in CO, IL, KS, MN, MO, NM, OK, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): West Coast Shippers Association, 200 South 71st St., Philadelphia, PA 19142. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 141108 (Sub-6TA), filed April 13, 1979. Applicant: D & C EXPRESS, INC., P.O. Box 746, Wilton, IA 52778. Representive: Kenneth F. Duley, Box 279, Ottumwa, IA 52501. (1) *Iron and steel articles,* from the plantsite and storage facilities of North Star Steel Company located at or near Wilton, IA to points in OH and PA. (2) *Materials, equipment and supplies,* (except commodities in bulk), used in the manufacture and distribution of iron and steel articles, from OH and PA to the facilities of North Star Steel Company located at or near Wilton, IA. Supporting shipper(s): North Star Steel Co., P.O. Box 495, Wilton, IA 52778. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 141958 (Sub-14TA), filed April 25, 1979. Applicant: FEDCO FREIGHTLINES, INC., P.O. Box 422, Effingham, IL 62401. Representive: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Authority sought to operate as a Contract Carrier by motor vehicle, over irregular routes, transporting: Drug and personal care products, cleaning and washing compounds, maintenance supplies for institutional and industrial use, such commodities as are dealt in by wholesale, retail, and chain drug, grocery, and food business houses, and materials, equipment and supplies used in the manufacture and distribution of the above described commodities (except commodities in bulk), between points in IL, IN, KY, MI, MO, OH, TN, PA, and Kansas City, KS, for 180 days, under a continuing contract or contracts with The Procter & Gamble Company and its wholly-owned subidiaries, The Proceder & Gamble Distributing Company, The Procter & Gamble Manufacturing Company, The Procter & Gamble Paper Products Company, and The Folger Coffee Company. Supporting shipper(s): The Procter & Gamble Company and its wholly-owned subidiaries, The Proceder & Gamble Distributing Company, The Procter & Gamble Manufacturing Company, The Procter & Gamble Paper Products Company, and The Folger Coffee Company, P.O. Box 599, Cincinnati, OH 45201. Send protests to: Charles Little, District Supervisor, Interstate Commerce Commission, Leland Bldg., 4th Fl., 527 E. Capitol, Springfield, IL 62706.

MC 142508 (Sub-74TA), filed April 16, 1979. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, 10810 South 144th Street, Omaha, NE 68137. Representive: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *Drugs, medicines, and toilet preparations,* from the facilities of Smith Kline & French at Philadelphia, PA commercial zone to Southaven, MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Smith Kline & French Laboratories, P.O. Box 7929, Philadelphia, PA 19101. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 142508 (Sub-75TA), filed April 16, 1979. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, 10810 So. 144th St., Omaha, NE 68137. Representive: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *Drink mixes (except in bulk),* from Byhalia, MS to points in CO, CT, IL, IA, KS, MA, MO, MN, NE, NJ, NY, PA, RI, SD, and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Professional Mixers, Inc., 300 Chesterfield Center, Suite 210, Chesterfield, MO 63017. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 142508 (Sub-76TA), filed April 20, 1979. Applicant: NATIONAL TRANSPORTATION, INC., 10810 South 144th St., P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *Fruit and berry products and condiments,* from Yuba City, CA and Markham, WA to points in AZ, MN, ND, SD, OK, TX, UT, and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ocean Spray Cranberries, Inc., Markham, WA 98520. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 142508 (Sub-77TA), filed April 20, 1979. Applicant: NATIONAL TRANSPORTATION, INC., 10810 So. 144th St., P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *Canned goods,* from the facilities of Campbells Soup Company at or near Chicago, IL to points in IN, KY, and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Campbell Sales Company, 2550 West 35th St., Chicago, IL 60632. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 142958 (Sub-2TA), filed April 11, 1979. Applicant: EMERGENCY MEDICAL DELIVERIES, INCORPORATED, 3613 Marine Rd., Toledo, OH 43609. Representative: Michael M. Briley, 300 Madison Ave., 12th Fl., Toledo, OH 43603. (1) *Medicinal intravenous solutions, dialysis patient treatment kits, mineral water and liquid formaldehyde (except commodities in bulk in tank vehicles),* and (2) *materials*

*and supplies used in the administration of the commodities in (1) above (except commodities in bulk in tank vehicles),* between (a) Toledo, OH, on the one hand, and, on the other, points in IL (except Cook, Will, DuPage and Lake Counties), KY and WI (south of SR 33) and (b) Cleveland, OH on the one hand, and, on the other, points in the Lower Peninsula of MI, PA (West of Interstate Hwy. 81 and SR 15), and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Erika, Inc., 1 Erika Plaza, Rockleigh, NJ; the Kolff Foundation, 10300 Carnegie Ave., Cleveland, OH 44106. Send protests to: P. J. Crawford, TCS, 600 Arch St., Rm. 3238, Phila., PA 19106.

MC 143058 (Sub-9TA), filed April 10, 1979. Applicant: TRANS WEST CARRIERS, INC., 14416 Slover Avenue, Fontana, CA 92355. Representative: Richard C. Celio, 1415 West Garvey Avenue, suite 102, West Covina, CA 91790. *Plumbers' goods and fittings and materials, supplies, and equipment used in the manufacture and distribution thereof,* from Los Angeles and San Bernardino Counties, CA to points in and west of MT, WY, CO, and NM (except CA), for 180 days. Supporting shipper(s): Plumbing Fixtures Division, Norris Industries, 700 Fairway Drive, City of Industry, CA 91744. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 144119 (Sub-3TA), filed March 16, 1979. Applicant: HANSEN CONSOLIDATORS, INC., 16121 Canary Street, La Mirada, CA 90638. Representative: Miles L. Kavaller, Mandel & Kavaller, 315 So. Beverly Drive, Suite 315, Beverly Hills, CA 90212. *Such commodities as are dealt in by grocery, drug and variety stores,* originating at the facilities of Wilson Manufacturing Corporation and its division, Hugh H. Wilson Company, in Sunbury, PA to La Mirada, CA and Carrollton, TX, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Wilson Manufacturing Corporation and Hugh H. Wilson Company, a division of Wilson Manufacturing Corporation, Packer Street, Sunbury, PA 17801. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012.

MC 144188 (Sub-6TA), filed April 10, 1979. Applicant: P. L. LAWTON, INC., P.O. Box 325, Berwick, PA 18603. Representative: John M. Musselman, P.O. Box 1146, Harrisburg, PA 17108. *Such merchandise* as is dealt in by retail, wholesale, chain grocery and food business houses (except commodities in bulk and frozen foods), from Chicago, IL, and points in its commercial zone, and Northbrook, IL, to points in CT, DE, MA, MD, ME, NH, NJ, NY, OH, PA, RI, VA, VT, WV and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Borden Foods, Div. of Borden, Inc., 180 E. Broad St., Columbus, OH 43215. Send protests to: ICC, Wm. J. Green, Jr., Federal Bldg., 600 Arch St., Philadelphia, PA 19106.

MC 144239 (Sub-10TA), filed April 25, 1979. Applicant: J.L.T. CORPORATION, Route 22, White House Station, N.J. 08889. Representative: Charles J. Williams, 1815 Front Street, Scotch Plains, N.J. 07076. *Contract carrier:* irregular routes: *Frozen sour dough bread,* in vehicles equipped with mechanical refrigeration, from the facilities of Parisian Baking Co. at San Francisco, CA to Boston, MA, Baltimore, MD, Columbus, OH, New York, NY and Philadelphia, PA, under contract with Parisian Baking Co., for 180 days. An underlying ETA (partial) seeks 90 days authority. Supporting shipper(s): Parisian Baking Co., 1995 Evans Avenue, San Francisco, CA 94124. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, N.J. 08608.

MC 144428 (Sub-7TA), filed April 19, 1979. Applicant: TRUCKADYNE, INC., Route 16, Mendon, MA 01756. Representative: Peter A. North, Route 16, Mendon, MA 01756. *Contract carrier:* irregular routes: *Plastic articles, flashlights, lanterns, batteries, lighting fixtures, and other products used or useful in the manufacturing, marketing, and processing of the above products,* between the facilities of Ray-O-Vac at Clinton and Harvard, MA, on the one hand, and, on the other, points in CA, GA, IL, MO, NJ, OH, OR, TN, TX and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ray-O-Vac Division of ESB, Inc., 56 Green Street, Clinton, MA 01510. Send protests to: David M. Miller, DS, ICC, 436 Dwight Street, Springfield, MA 01103.

MC 144888 (Sub-7TA), filed April 9, 1979. Applicant: BIL-RIC TRANSPORT SYSTEMS, INC., 92 East Main Street, Somerville, NJ 08876. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. Contract carrier, irregular routes for 180 days. Such commodities as are manufactured, sold and distributed by retain grocery and drug stores, for the account of Beecham Products Company (except commodities in bulk and foodstuffs) From the plantsites of Beecham Products Company at Rockwood, MI, Clifton, NJ and Morrisville (Bucks County) PA to Rockwood, Michigan, Clifton, NJ and Morrisville (Bucks County) PA, Los Angeles, CA, Denver, CO, Savannah, GA, Chicago, IL, Kansas City, MO, Milwaukie, OR, Memphis, TN and Dallas, TX. Supporting Shipper(s): Beecham Products Company, P.O. Box 1467, Pittsburgh, PA 15230. Send protests to: Irwin Rosen, TS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 144889 (Sub-7TA), filed March 21, 1979. Applicant: RONWAL TRANSPORTATION, INC., 2600 Calumet Avenue, Hammond, IN 46320. Representative: Walter C. Rymarowicz, (same as applicant). *Iron and steel articles;* from the facilities of U.S. Steel Corp. at/near Gary, In to points and places in IL on and north of U.S. Hwy. 36. An underlying ETA seeks 90 days authority. Supporting Shipper(s): U.S. Steel Corp., 1000 East 80th Place, Merrillville, IN 46410. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 144989 (Sub-2TA), filed April 11, 1979. Applicant: BLUE RIDGE MOUNTAIN CONTRACT CARRIER, INC., P.O. Box 1965, Dalton, GA 30720. Representative: S. H. Rich, 1600 Cromwell Ct., Charlotte, NC 28205. *Contracts Carrier: irregular routes: Carpets, carpeting, carpet ramments, or rugs* from Floyd and Gordon Counties, to points in the States of CT, IL, ME, MA, NY, OH, OR, PA, RI, SC, TX, VA, and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Marglen Industries, Inc., Div. of Transportation, P.O. Box 3028, Ward Mt. Rd., Rome, GA 30161. Send protests to: Sara K. Davis TA, ICC, 1252 W. Peachtree St., N.W., Room 300, Atlanta, GA 30309.

MC 145288 (Sub-2TA), filed April 13, 1979. Applicant: SPECIALIZED HAULING CORPORATION, Box 488, Barre, VT 05641. Representative: John P. Monte, Box 568, Barre, VT 05641. *Utility poles.* (1) between points in ME, on the one hand, and, on the other, points in VT, and (2) from points in VT to points in Coos, Grafton, Sullivan, Hillsboro and Cheshire Counties, NH, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Southern Wood Piedmont Company, PO Box 5447, Spartanburg, SC 20304. Send protests to: ICC, PO Box 548, Montpelier, VT 05602.

MC 145309F (Sub-1TA), filed April 20, 1979. Applicant: BLACK PINE TRUCKING, INC., Rt. 8 Box 97, Idaho Falls, ID 83401. Representative: Garry Tolbert (same as above). *Liquid and bulk fertilizer and feed ingredients,* between points in ID, MTUT & WY on the one hand, and on the other, points in NV, MT, UT & WY, under continuing contract with Northwest PMS/Feed Service, for 180 days. An underlying ETA seeks 90 day authority. Supporting Shipper(s): Northwest PMS/Feed Service, P.O. Box 2143, Idaho Falls, ID 83401. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 145359 (Sub-3TA), filed March 19, 1979. Applicant: THERMO TRANSPORT, INC., 156 E. Market Street, Indianapolis, IN 46204. Representative: Donald W. Smith, Suite 945–9000 Keystone Crossing, Indianapolis, IN 46240. *Iron and steel articles,* from the facilities of Jones & Laughlin Steel Corporation at Hammond, IN to points in Los Angeles, Orange, San Bernardino, Ventura, San Diego, Kings, Alameda, Contra Costa, Marin, Santa Clara, San Mateo, Solano, Sacramento, Sonoma Counties, CA, for 180 days. Supporting Shipper(s): Jones & Laughlin Steel Corporation, 1690 W. Carson Street, Pittsburgh, PA 16263. SEND PROTESTS TO: Beverly J. Williams, Transportation Assistant, I.C.C. 46 E. Ohio St., Rm 429, Indianapolis, IN 46204.

MC 145359 (Sub-4TA), filed March 19, 1979. Applicant: THERMO TRANSPORT, INC., 156 E. Market Street, Indianapolis, IN 46204. Representative: Donald W. Smith, Suite 945–9000 Keystone Crossing, Indianapolis, IN 46240. *Copper, brass, aluminum and bronze articles, cable materials, wire, wire products and materials and supplies used in the distribution thereof,* from the facilities of Revere Copper and Brass Incorporated at Rome, NY, to Los Angeles and San Francisco, CA, for 180 days. Supporting Shipper(s): Revere Copper and Brass Incorporated, P.O. Box 191, Rome, NY 13440. SEND PROTESTS TO: Beverly J. Williams, Transportation Assistant, I.C.C. 46 E. Ohio St., Rm 429, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

MC 145399 (Sub-7TA), filed April 25, 1979. Applicant: SHAY DISTRIBUTING CO., INC., P.O. Box 3465, Orange, CA 92665. Representative: Kim G. Meyer, P.O. Box 56387, Atlanta, GA 30343. *Furniture parts,* from the facilities of Hoover Universal, Inc., at or near (1) Leitchfield, KY to McKinney, Waco and Brenham, TX; Portland, OR; Minneapolis, MN; Denver, CO; Richmond and Vernon, CA; Phoenix, AZ; and Chicago, IL, and their respective commercial zones; (2) Delaplain, KY to Phoenix, AZ; South Gate and Richmond, CA; Denver, CO; St. Paul, MN; Portland, OR; Brenham and Fort Worth, TX; and their respective commercial zones; and (3) Georgetown, KY to Vernon, CA, and its commercial zone, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting Shipper(s): Hoover Universal, Inc., Route 2, Triport Road, Georgetown, KY 40324. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 145928 (Sub-1TA), filed April 17, 1979. Applicant: PANTEGO DISTRIBUTING COMPANY, INC., P.O. Box 176, Pantego, NC 27860. Representative: Peter A. Greene, 900 17th Street, N.W., Washington, DC 20006. *Paper and paper products* from the facilities of Weyerhaeuser Company, Inc., in NC to points in CT, FL, NJ, RI, NY, MA, ME, NH, VT, and to the facilities of Weyerhaeuser Company at Seymour, IN for 180 days. An underlying ETA has been filed seeking 90 days authority. Supporting Shipper(s): Weyerhaeuser Company, P.O. Box 787, Plymouth, NC 27962. Send protests to: Mr. Archie W. Andrews, D/S ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 145979 (Sub-2TA), filed April 9, 1979. Applicant: CALIFORNIA EXPRESS, LTD., 100 Beta Drive, P.O. Box 756, Franklin, TN 37064. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Electric motors and electric motor parts* from Lexington, McMinnville and Davidson County, TN to points in AZ, CA, NV, OR, UT, and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Gould, Inc., 1831 Chestnut Street, St. Louis, MO 63116. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 146128 (Sub-3TA), filed April 4, 1979. Applicant: MERRITT FOODS COMPANY d.b.a., Merritt Refrigerated Service, 2840 Guinotte Street, Kansas City, Missouri 64120. Representative: Arthur J. Cerra, P.O. Box 19251, 2100 Ten Main Center, Kansas City, Missouri 64141. Confectionery and foodstuffs, in mechanically refrigerated equipment from the commercial zone of Chicago, IL to the commercial zone of Kansas City, MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Chicago Candy & Grocery Shipper's Assoc., 2535 North 25th Avenue, Franklin Park, IL 60131. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, Missouri 64106.

MC 146258 (Sub-7TA), filed April 11, 1979. Applicant: M. R. BRUTON, INC., P.O. Box 547, Cuba, MO 65453. Representative: Stephen H. Loeb, Atty., Suite 200, 205 W. Toughy Ave., Park Ridge, IL 60068. *Iron and steel articles* (except commodities in bulk) from the facilities of La Barge, Inc., at St. Louis, MO to points in AZ, AR, CA, LA, NM, OK, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): LABARGE, Inc., Tubular Div., 20 S. 4th St., St. Louis, MO 63102. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 146258 (Sub-8TA), filed April 11, 1979. Applicant: M. R. BRUTON, INC., P.O. Box 547, Cuba, MO 65453. Representative: Stephen H. Loeb, Atty., Suite 200, 205 W Touhy Ave., Park Ridge, IL 60068. *Fertilizer,* in bags, from Salida, CO to points in IL and Mo, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): U. S. Soil Products, Route 1, Box 54, Calendonia, MO 63631. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 146329 (Sub-4TA), filed April 2, 1979. Applicant: W-H TRANSPORTATION CO., INC., P.O. Box 1222, Wausau, WI 54401. Representative: Wayne Wilson, 150 E. Gilman St., Madison, WI 53703. *Such commodities as are dealt in or used by agricultural equipment and industrial equipment dealers and manufacturers* (except commodities in bulk) from Racine, WI to points in KS, MT and NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): J. I. Case Co., 700 State St., Racine, WI 53404. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 146568 (Sub-1TA), filed March 19, 1979. Applicant: PHOENIX BIRD, INC., Suite 118, 1 Neshaminy Plaza, Street Rd. and Bristol Pike, Cornwells Heights, PA 19020. Representative: Ronald Cobert, Suite 501—1730 M St. NW., Washington, DC 20036. Contract, irregular routes, *Drugs, toilet preparations, medicine and health care items, (except in bulk),* from Ft. Washington, PA; Lewes and

Millsboro, DE; Burlington and Pennsauken, NJ; and Washington, DC to points in CA, CO, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MO, NE, NC, OH, OK, SC, TN, TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Wm. H. Rorer, Inc., 500 Virginia Dr., Ft. Washington, PA 19034.Send protests to: T. M. Esposito, Trans. Asst., 600 Arch St., Room 3238, Phila., PA 19106.

MC 146569 (Sub-1TA), filed April 6, 1979. Applicant: WELTON MOTOR FREIGHT, INC., 1301 Hermitage Road, Richmond, VA 23220. Representative: Calvin F. Major, Attorney at Law, 200 W. Grace St., Suite 415, Richmond, Virginia 23220. Contract—irregular: (1) *Lime and limestone products* and (2) *prilled nitrogen,* in bulk, from (1) Virginia to eastern counties (east of U.S. 95) of North Carolina; and (2) from Tunis, N.C. to points in VA; MD; DE and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Southern States Cooperative, Inc., P.O. Box 26234, Richmond, VA 23260 Albemarle Chemical Company, P.O. Box 26, Hertford, N.C. 27944. Send protests to: Paul D. Collins, DS, ICC, Room 10–502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 146578 (Sub-1TA), filed April 24, 1979. Applicant: PALMETTO MOTOR LINES, INC., 7153 Lone Oak Road, Spartanburg, SC 29302. Representative: Nina G. Shults, P.O. Box 6445, Spartanburg, SC 29304. *Can ends or tops, flat or nested; containers; sheet, iron or steel, S.U.; plate, iron, tin or steel. Pulpboard or fibreboard boxes, without wooden frames, (paper boxes), corrugated K.D. flat or folded flat,* between Spartanburg County, SC on the one hand, and, on the other, points in NC, GA and TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Crown Cork & Seal Co., Inc., 9300 Ashton Rd., Philadelphia, PA 19136, Harley Corporation, P.O. Box 5497, Spartanburg, SC 29304, A. & H. Waste Company, P.O. Box 376, Arcadia, SC 29320. Send protests to: E. E. Strotheid, D/S, ICC Rm. 302, 1400 Building, 1400 Pickens St., Columbia, SC 29201.

MC 146618 (Sub-2TA), filed March 15, 1979. Applicant: CLIFFORD L. WILSON, Niawa Star Route, Park Rapids, MN 56470. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. *Contract carrier:* irregular routes: in interstate or foreign commerce, (1) *Lath, snowfence, fence building materials, bridging and grade stakes,* from the facilities of Franklin Fence Co. at or near Vergas and Williams, MN to points in IA, SD, WI, ND and NE, under contract(s) with Franklin Fence Co., and (2) *Wood products, including lumber, ties, treated timber, posts and poles,* from the facilities of North Star Lumber & Supply Co. at or near Menahga, MN to points in IA, ND, SD and WI, and ports of entry between the United States and Canada located in ND and MN, under contract(s) with North Star Lumber & Supply Co., for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): North Star Lumber & Supply Company, Menahga, MN 56464; Franklin Fence, Vergas, MN 56587. Send protests to: DS, ICC, Room 268, Fed. Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 146649 (Sub-1TA), filed April 4, 1979. Applicant: JOHNNY'S TRANSFER CO., INC., 550 Gulf Dr., Charlotte, NC 28208. Representative: Johnny Collie Rogers, 550 Gulf Dr., Charlotte, NC 28208. *Contract* carrier-irregular routes; *Empty fibre, shipping drums, parts, and components not in bulk* from the facilities of the Continental Group, Inc., Continental Forest Industries, Charlotte, NC to all points in SC, NC, and GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): The Continental Group, Inc., Continental Forest Industries, Office Park II, Greenwich, CT 06830. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 146659 (Sub-2TA), filed April 17, 1979. Applicant: GOLDSTON TRANSFER, INC., P.O. Box 338, Eden, NC 27288. Representative: K. Edward Wolcott, 1200 Gas Light Tower, 235 Peachtree St., N.E., Atlanta, GA 30303. *Malt beverage containers, container ends, and container caps* from Greensboro, NC and Ringgold, VA to Eden, NC for 180 days. An underlying ETA has been filed seeking 90 days authority. Supporting Shipper(s): Brockway Glass Co., Inc., P.O. Box 30 RFD 1, Ringgold, VA 24586. Kaiser Aluminum & Chemical Sales, Inc., 200 Route 22, Hillside, NJ 07205. Send protests to: Mr. Archie W. Andrews, D/S ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 146668 (Sub-1TA), filed March 30, 1979. Applicant: MICHAEL BENNETT TRUCKING, INC., 16 E. Amador, Seneca, KS 66538. Representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Suite 110–L, Topeka, KS 66612. *Alfalfa Products,* from the facilities of Western Alfalfa Corp., Topeka, KS to points in AR, OK, and MO; and from the facilities of Western Alfalfa Corp. Odessa and Schuyler, NE to points in KS and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Western Alfalfa Corporation, 6400 Glenwood, Shawnee Mission, KS 66202. Send protest to: Thomas P. O'Hara, D/S, ICC, 256 Federal Bldg., 444 S. E. Quincy, Topeka, KS 66683.

MC 146688 (Sub-1TA), filed April 20, 1979. Applicant: ROAD WEST, INC., 1315 E. Holt Blvd., P.O. Box 3637, Ontario, CA 91761. Representative: Peter R. Atchison (same address as applicant). *Contract:* irregular: *Label stock and equipment, parts and supplies used in the manufacture of label stock (except commodities in bulk and those requiring special equipment),* from Peach Tree City, GA; Fitchburg, MA; Holyoke, MA; International Falls, MN; Akron, Dayton, Hamilton and Painesville, OH; Quakertown, PA; and Rheinlander, WI, to the facilities of Fasson, An Avery International Company, at Cucamonga, CA, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting Shipper(s): Fasson, An Avery International Company, 9292 Ninth Street, Cucamonga, CA 91730. Send protest to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 146699 (Sub-1TA), filed March 10, 1979. Applicant: KENNETH E. JONES & JAMES H. PARRISH, d.b.a. DE SOTO TRAIL, 282 East Main St., Franklin, NC 28734. Representative: Bruce E. Mitchell Esq., 3390 Peachtree Rd., NE, Atlanta GA 30326. *Contract* Carrier-Irregular Routes; *Building materials* between the facilities of Zickgraf Hardwood Company at or near Franklin, NC, on the one hand, and on the other, to points in GA, FL, SC, VA, WV, MD, NJ, PA, NY, CT, RI, MA, NH, VT and ME and DC, for 180 days. An underlying ETA seeks 90 days authority. Operations to be performed under contract or continuing contracts with Zickgraf Hardwood Co. Supporting Shipper(s): Zickgraf Hardwood Company, P.O. Box 230, Franklin, NC 28734. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 146718 (Sub-1TA), filed March 29, 1979. Applicant: MILNE ENTERPRISES, INC., 72 Littleworth Rd, Dover, NH 03820. Representative: Richard V. Wiebusch, Esquire, Sheehan, Phinney, Bass & Green, 1000 Elm St, Manchester, NH 03101. *Gasoline, kerosene and fuel oils, in bulk,* between points in ME, MA, NH, RI, and VT, for 180 days. Supporting Shipper(s): There are six shippers. Their

statements may be examined at the office listed below and headquarters. Send protests to: Ross J. Seymour, DS, ICC, Rm 3, 6 Loudon Rd, Concord, NH 03301.

MC 146719 (Sub-1TA), filed April 12, 1979. Applicant: MATERIAL DELIVERY SERVICE, INC., P.O. Drawer F, Alabaster, AL 35007. Representative: Charles N. Schueler, Route 1, Box 312, Wilsonville, AL 35186. *Lime kiln dust,* in bulk, from Shelby County, AL, to Fulton County, GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ash Management Corporation, 3226 Cedar Bluff Drive, Marietta, GA 30026. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616–2121 Building, Birmingham, AL 35203.

MC 146729 (Sub-1TA), filed April 26, 1979. Applicant: JAMES S. HELWIG & ALLEN L. GRIMLAND, d.b.a. H & G LEASING, 2901 Inwood, Dallas, TX 75235. Representative: Paul D. Angenend, P.O. Box 2207, Austin, TX 78768. *Lime (except in bulk)* from Dallas and Midlothian, TX, to Commerce and San Jose, CA; Denver, CO; Orlando, FL; Atlanta, GA; Council Bluffs, IA; Topeka, KS; Louisville, KY; Jackson, MS; Salisbury, NC; Kirkwood, NY; Massilion, OH; Williamsport, PA; Memphis, TN; Vancouver, WA; and Beloit and Monroe, WI, for 180 days. Underlying ETA filed. Supporting shipper(s): Atlantes Industries, Inc., 8320 Chancellor Row, Dallas, TX 75245. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 146758 (Sub-1TA), filed April 10, 1979. Applicant: LADLIE TRANSPORTATION, INC., 103 East Main Street, Albert Lea, MN 56007. Representative: Robert S. Lee, 1000 First National Bank Building, Minneapolis, MN 55402. *(1) Cheese, cheese products and synthetic cheese; and (2) Equipment, materials and supplies used in the manufacture of commodities in (1) above* from points in WI to points in IL, IA and MO, for 180 days. An underlyilng ETA seeks 90 days authority. Supporting shipper(s): L. D. Schreiber Cheese Co., Inc., Corporate Traffic Manager, P.O. Box 610, Green Bay, WI 54305. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 146788 (Sub-1TA), filed April 13, 1979. Applicant: NORMAN JOHNSON d.b.a. JOHNSON TRUCKING, 913 South 13th Place, Norfolk, NE 68701. Representative: Norman Johnson (same address as applicant). *Contract carrier:* Irregular routes: *Iron and steel,* (1) from Pueblo, CO; Wilton, IA; St. Louis, MO; Minneapolis and St. Paul, MN; Portland, OR; Salt Lake City, UT; and points in IL, IN, and TX to the facilities of Norfolk Iron and Metal at Norfolk, Nebraska; and (2) from the facilities of Norfolk Iron and Metal at Norfolk, NE to points in CA, CO, IA, IL, IN, KS, MO, MI, MN, MT, ND, SD, UT, and WY, under contract with Norfolk Iron and Metal, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Norfolk Iron and Metal, 300 Braasch Ave., Norfolk, NE 68701. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146789 (Sub-1TA), filed April 13, 1979. Applicant: NORRIS O'DEY d.b.a. O'DEY TRANSPORTATION, 104 Monroe Ave., Norfolk, NE 68701. Representative: Norris O'Dey, Same address as above. *Contract carrier:* irregular routes: *Iron and steel,* (1) from Pueblo, CO; Wilton, IA; St. Louis, MO; Minneapolis and St. Paul, MN; Portland, OR; Salt Lake City, UT; and points in IL, IN, and TX to the facilities of Norfolk Iron and Metal at Norfolk, NE; and (2) from the facilities of Norfolk Iron and Metal at Norfolk, NE to points in CA, CO, IA, IL, IN, KS, MO, MI, MN, MT, ND, SD, UT, and WY, under contract with Norfolk Iron and Metal, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Norfolk Iron and Metal, 300 Braasch Ave., Norfolk, NE 68701. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146798 (Sub-1TA), filed April 16, 1979. Applicant: SULLIVAN TRUCKING, INC., 1340 Umatilla Street, Denver, CO 80204. Representative: Richard P. Kissinger, 50 S. Steele St., Suite 330, Denver, CO 80209. *Common carrier:* irregular routes: *(1) Malt Beverages and related advertising materials* from Jefferson County, CO to points in AZ, CA, ID, NV, UT, and WA; *(2) Empty used beverage containers for recycling, and materials and supplies used in and dealt with by breweries* from points in AZ, CA, ID, NV, UT, and WA to points in Jefferson County, CO for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Adolph Coors Co., Golden, CO 80401. Send protests to: District Supervisor R. L. Buchanan, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 146799 (Sub-1TA), filed April 13, 1979. Applicant: J & S TRUCKING, INC., 7515 East Slauson Avenue, Commerce, CA 90040. Representative: Michael A. Salcido, 7515 East Slauson Avenue, Commerce, CA 90040. *(1) Iron or steel articles, and (2) Foodstuffs, cold pack or frozen, that normally is sold by retail stores or retail warehouses to retail customers,* from points and places in Los Angeles and Orange Counties, CA to points and places in AZ. An underlying ETA seeks 90 days authority. Supporting Shipper(s): State Pipe & Supply, 7545 Telegraph Road, Los Angeles, CA 90040. Arctic Cold Storage, Inc., 13033 Arctic Circle Drive, Santa Fe Springs, CA 90670. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 146819 (Sub-1TA), filed April 17, 1979. Applicant: TRANS-WEST SERVICE, 8856 East Rosecrans Avenue, Downey, CA 90242. Representative: John Aryon, "Same Address As Applicant". *Potato chips, twists, puffs, french fries, and hash brown potatoes,* between points and places in Los Angeles County, CA and points and places in Clark County, NV, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting Shipper(s): Bell Brand Foods, Inc., 8825 Millergrove Drive, Santa Fe Springs, CA 90670. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 146828 (Sub-2TA), filed April 26, 1979. Applicant: WILLIE ODELL DAWSON, 47D N. E. Middlefield Rd., Portland, OR 97211. Representative: John A. Anderson, Suite 1440–200 Market Bldg., Portland, OR 97201. *Contract, irregular, shakes, shingles and ridgetrim* from Montesano, Elma, Pe Ell, Raymond and Lakeside, WA to Fresno, CA under a continuing contract or contracts with Lovejoy Building Materials, Fresno, CA, for 180 days. A corresponding ETA was granted 4/19/79 for 30 + 2 and a Permanent has been filed. An underlying ETA seeks 90 days authority. Supporting shipper(s): Lovejoy Building Materials, 724 N. Monte, Fresno, CA 93728. Send protests to: R. V. Dubay, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, Oregon 97204.

MC 146839 (Sub-1TA), filed April 18, 1979. Applicant: T. C. TRANSPORTATION, INC., 299 Lawrence Ave., So. San Francisco, CA 94080. Representative: Michael S. Rubin, 256 Montgomery St., 5th Floor, San Francisco, CA 94104. General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special

equipment), between points in San Francisco, San Mateo, Alameda and Santa Clara Counties, CA, on the one hand, and on the other, points in Los Angeles County, CA restricted to traffic having a prior or subsequent movement by air, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Air Express International, 299 Lawrence Ave., So. San Francisco, CA 94080, and Behring International, Inc., 20 Rollins Rd., Millbrae, CA 94030. Send protests to: District Supervisor, 211 Main, Suite 500, San Francisco, CA 94105.

**H. G. Homme, Jr.,**

*Secretary.*

[FR Doc. 79-17609 Filed 6-6-79; 8:45 am]

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**[Volume No. 12]**

## Permanent Authority Decisions; Decision-Notice

*Correction*

In FR Doc. 79-5542, published at page 10827, on Friday, February 23, 1979, on page 10833, in the third column, in the paragraph "MC 117940 (Sub-303F)", in the second line the applicant's name reading "NATIONAL CARRIERS, INC." should be corrected to read "NATIONWIDE CARRIERS, INC.".

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**[Decisions Volume No. 63]**

## Permanent Authority Applications; Decision-Notice

Decided: May 16, 1979.

The following applications filed on or before February 28, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). For applications filed before March 1, 1979, these rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register**. Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

On cases filed on or after March 1, 1979, petitions for intervention either with or without leave are appropriate.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If applicant has introduced rates as an issue it is noted. Upon request an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

*Findings*

With the exceptions of those applications involving duly noted poblems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

**H. G. Homme, Jr.,**

*Secretary.*

MC 19945 (Sub-70F), filed February 22, 1979. Applicant: BEHNKEN TRUCK SERVICE, INC., Route #13, New Athens, IL 62264. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *salt*, from St. Louis, MO, to points in IN and IL. (Hearing site: St. Louis, MO.)

MC 24784 (Sub-21F), filed February 22, 1979. Applicant: BARRY, INC., 463 South Water, Olathe, KS 66061. Representative: Arthur J. Cerra, P.O. Box 19251, 2100 TenMain Center, Kansas

City, Mo 64141. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic articles and rubber articles*, (1) between the facilities of Industrial Plastics Corp., at (a) Council Grove, KS, (b) Elkhart, IN, and (c) Fitzgerald, GA, and (2) from Council Grove, KS, to Burlington, IA, Greenville, MS, and Pilot Rock, OR. (Hearing site: Kansas City, MO.)

MC 73165 (Sub-465F), filed February 2, 1979. Applicant: EAGLE MOTOR LINES, INC., P.O. Box 11086, Birmingham, AL 35202. Representative: R. Cameron Rollins (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *cooling towers and condensers*, and (2) *accessories, materials, and supplies* used for cooling towers, from the facilities of Baltimore Air Coil Company, at or near Paxton, IL, to points in AL, AR, CO, FL, GA, IL, IA, KS, LA, MI, MS, MN, MT, NE, NM, ND, OK, SD, TN, TX, WI, and WY. (Hearing site: Memphis, TN, or Columbus, OH)

MC 97345 (Sub-4F), filed January 26, 1979, previously noticed in the **Federal Register** issue of April 3, 1979. Applicant: DUFFY STORAGE & MOVING CO., d.b.a. DUFFY HEAVY MOVING CO., 389 S. Lipan Street, Denver, CO 80223. Representative: Robert G. Shepherd, Jr., 915 Pennsylvania Bldg., 425 13th Street, NW., Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *commodities* which because of size or weight require the use of special equipment, (2) *concrete products*, (3) *construction materials, equipment, and supplies*, (4) *mining materials, equipment, and supplies*, (5) *telephone and power line materials*, (6) *transformers*, (7) *plant equipment and parts* thereof, between points in CO, WY, UT, NM, and AZ, and those in NE and KS on and west of U.S. Hwy 183, and (8) *general commodities* (except those of unusual value, classes A and B explosives, and commodities in bulk), between points in Denver, Adams, Arapahoe, and Jefferson Counties, CO, restricted in parts (1), (2), (3), (4), (5), (6), and (7), against (a) service between points in Denver, Adams, Arapahoe, and Jefferson Counties, CO, (b) transportation of commodities in bulk, and (c) the transportation of oilfield commodities for the oil and gas industries, as defined in *Mercer, Extension—Oilfield Commodities*, 74 M.C.C. 459. Condition: Prior or coincidental cancellation, at applicant's written request of its Certificate of Registration in MC–97345 Sub 2.

**Note.**—Applicant seeks to convert its Certificate of Registration which now authorizes the transportation of (a) *general commodities*, between points in Denver, Adams, Arapahoe, and Jefferson Counties, CO, (b) *commodities* which because of size or weight, require the use of special equipment, *concrete products*, and *self-propelled equipment and machinery*, between points in CO, (c) *construction materials and supplies*, restricted to shipments from or to construction sites, between points in CO, and (d) *plant machinery and plant equipment* (including incidental parts and materials moving in connection therewith), between points in CO, with the restrictions named above.

**Note.**—This republication indicates the correct route description. (Hearing site: Denver, CO.)

MC 99234 (Sub-12F), filed February 13, 1979. Applicant: WESTWAY MOTOR FREIGHT, INC., 5231 Monroe St., Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *malt beverages*, from points in Jefferson County, CO, to points in AZ, CA, ID, and KS; and (2) *materials and supplies* as are dealt in or used by breweries, in the reverse direction. (Hearing site: Denver, CO.)

MC 105045 (Sub-95F), filed February 9, 1979. Applicant: R. L. JEFFRIES TRUCKING CO., INC., P.O. Box 3277, Evansville, IN 47701. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *refrigeration equipment*, from the facilities of Vollrath Refrigeration, Inc., at Pell City, AL, to points in the United States, (except AK and HI). (Hearing site: Birmingham, AL).

MC 106074 (Sub-86F), filed February 13, 1979. Applicant: B & P MOTOR LINES, INC., Oakland Rd. and U.S. Hwy. 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, Suite 212, 5299 Roswell Rd., NE., Atlanta, GA 30342. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *rubber articles* and *plastic articles*, from the facilities of Entek Corp. of America, at or near Irving, TX, to points in FL, GA, IL, IN, IA, KS, MO, NC, SC, and VA; and (2) *materials and supplies* used in the manufacture of the commodities named in (1) above, in the reverse direction, restricted in part (2) above against the transportation of commodities in bulk, in tank vehicles. (Hearing site: Dallas, TX, or Atlanta, GA).

**Note.**—Dual operations may be involved.

MC 106644 (Sub-275F), filed February 21, 1979. Applicant: SUPERIOR TRUCKING COMPANY, INC., P.O. Box 916, Atlanta, GA 30301. Representative: Louis C. Parker, III (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *fabricated steel products, trailers, agricultural implements, and metal buildings*, and (2) *parts and accessories* for the commodities in (1) above, from the facilities of The Brinkley Company, in Montgomery and Warren Counties, MO, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the named origins. (Hearing site: St. Louis, MO, or Washington, DC).

MC 109124 (Sub-62F), filed February 22, 1979. Applicant: SENTLE TRUCKING CORPORATION, P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 E. Broad St., Suite 1800, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from the facilities of Jones & Laughlin Steel Corporation, at Warren, MI, to the facilities of (1) Jones & Laughlin Steel Corporation, at (a) Aliquippa and Pittsburgh, PA, and (b) Cleveland, OH, (2) Jessop Steel Co., at Washington, PA, and (3) Washington Steel Co., at Houston, PA, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Columbus, OH, or Pittsburgh, PA).

MC 110325 (Sub-93F), filed January 29, 1979, previously noticed in the **Federal Register** of March 20, 1979. Applicant: TRANSCON LINES, a corporation, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Building, 1221 Baltimore Avenue, Kansas City, MO 64105. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Charleston, WV, and St. Louis, MO, (a) over Interstate Hwy 64, and (b) from Charleston over U.S. Hwy 60 to junction U.S. Hwy 52, then over U.S. Hwy 52 to

junction U.S. Hwy 50, then over U.S. Hwy 50 to junction U.S. Hwy 40, then over U.S. Hwy 40 to St. Louis, and return over the same route, (2) between Owensboro and Bowling Green, KY, over U.S. Hwy 231, (3) between Owensboro and junction Green River Parkway and U.S. Hwy 231, over Green River Parkway, (4) between Mayfield and London, KY, over KY Hwy 80, (5) between London, KY, and Cincinnati, OH, (a) over U.S. Hwy 25, and (b) over Interstate Hwy 75, (6) between Somerset and Lexington, KY, from Somerset over U.S. Hwy 27 to junction U.S. Hwy 150, then over U.S. Hwy 150 to junction U.S. Hwy 127, then over U.S. Hwy 127 to junction U.S. Hwy 68, then over U.S. Hwy 68 to Lexington, and return over the same route, (7) between Harrodsburg, KY and junction U.S. Hwy 127 and Interstate Hwy 64, over U.S. Hwy 127, (8) between junction U.S. Hwys 25 and 42 and Bowling Green, KY, from junction U.S. Hwys 25 and 42 over U.S. Hwy 42 to junction U.S. Hwy 31W, then over U.S. Hwy 31W to Bowling Green, and return over the same route, (9) between junction U.S. Hwys 42 and 31E and Glasgow, KY, over U.S. Hwy 31E, (10) between junction Interstate Hwys 71 and 75 and junction Interstate Hwy 65 and KY Hwy 80, from the junction of Interstate Hwys 71 and 75 over Interstate Hwy 71 to junction Interstate Hwy 65, then over Interstate Hwy 65 to junction Interstate Hwy 65 and KY Hwy 80, and return over the same route, (11) between Indianapolis, IN, and Hopkinsville, KY, from Indianapolis, over U.S. Hwy 40 to junction U.S. Hwy 41, then over U.S. Hwy 41 to junction U.S. Hwy Alt. 41, at or near Madisonville, KY, then over U.S. Hwy Alt. 41 to junction U.S. Hwy 41, at or near Nortonville, then over U.S. Hwy 41 to Hopkinsville, and return over the same route, (12) between Indianapolis and junction Interstate Hwy 40 and U.S. Hwy 41, over Interstate Hwy 70, (13) between Henderson and Hopkinsville, KY, from Henderson over Pennyrile Parkway to junction U.S. Hwy 41, then over U.S. Hwy 41 to junction Pennyrile Parkway, then over Pennyrile Parkway to Hopkinsville, and return over the same route, (14) between Stanford and Mt. Vernon, KY, over U.S. Hwy 150, (15) between Edmonton and Harrodsburg, KY, over U.S. Hwy 68, (16) between Indianapolis, IN, and Louisville, KY, (a) over U.S. Hwy 31, and (b) over Interstate Hwy 65, (17) between Owensboro, KY, and Indianapolis, IN, from Owensboro over U.S. Hwy 231 to junction IN Hwy 54, then over IN Hwy 54 to junction IN Hwy 445, then over IN Hwy 445 to junction IN Hwy 45, then over IN Hwy 45 to junction IN Hwy 37, then over IN Hwy 37 to Indianapolis, and return over the same route, (18) between Nashville, TN, and Bowling Green, KY, (a) over U.S. Hwy 31W, and (b) over Interstate Hwy 65, (19) between Nashville, TN, and Hopkinsville, KY, (a) over U.S. Hwy 41, and (b) over U.S. Hwy Alt. 41, (20) between Lexington, KY, and Memphis, TN, from Lexington over U.S. Hwy 60 to junction U.S. Hwy 51, then over U.S. Hwy 51 to Memphis, and return over the same route, (21) between junction U.S. Hwy 60 and Blue Grass Parkway and junction Purchase Parkway and U.S. Hwy 51, from junction U.S. Hwy 60 and Blue Grass Parkway over Blue Grass Parkway to junction Interstate Hwy 65, then over Interstate Hwy 65 to junction Western Kentucky Parkway, then over Western Kentucky Parkway to junction Purchase Parkway, then over Purchase Parkway to junction U.S. Hwy 51, and return over the same route, (22) between junction U.S. Hwy 60 and U.S. Hwy 62 and junction U.S. Hwy 45 and U.S. Hwy 51, from junction U.S. Hwy 60 and U.S. Hwy 62 over U.S. Hwy 62 to junction U.S. Hwy 45, then over U.S. Hwy 45 to junction U.S. Hwy 51, and return over the same route, (23) between junction KY Hwy 80 and Interstate Hwy 65 and Somerset, KY, from junction KY Hwy 80 and Interstate Hwy 65 over Interstate Hwy 65 to junction Cumberland Parkway, then over Cumberland Parkway to Somerset, and return over the same route, (24) between junction U.S. Hwy 150 and U.S. Hwy 27 and Lexington, KY, over U.S. Hwy 27, (25) between junction U.S. Hwy 50 and IN Hwy 37 and junction IN Hwy 37 and IN Hwy 45, over IN Hwy 37, (26) between junction U.S. Hwy 60 and U.S. Hwy 52 and junction U.S. Hwy 60 and U.S. Hwy 62, over U.S. Hwy 60, serving in (1) through (26) above, all intermediate points, and the off-route points of Jefferson, Fayette, Boyd, Daviess, Marshall, Warren, McCracken, Clark, Hardin, Franklin, Boone, Graves, Nelson, Taylor, Kenton, Oldham, Bullitt, Scott, Woodford, Jessamine, Bourbon, Campbell, Greenup, Larue, and Henderson Counties, KY, Ripley and New Bern, TN, and Mount Vernon, IL. (Hearing sites: Lexington and Louisville, KY, Memphis, TN and St. Louis, MO)

**Note.**—This republication indicates the correct route description in (20) and the off-route point of Ripley, TN.

MC 114274 (Sub-59F), filed February 11, 1979. Applicant: VITALIS TRUCK LINES, INC., 137 N.E. 48th St. Place, Des Moines, IA 50306. Representative: William H. Towle, 180 North LaSalle, St., Chicago, IL 60601. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Iowa Beef Processors, Inc., at or near (1) Dakota City and West Point, NE, and (2) Ft. Dodge and Denison, IA, to points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, WV, and DC, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Omaha, NE or Kansas City, KS.)

MC 116544 (Sub-170F), filed February 13, 1979. Applicant: ALTRUK FREIGHT SYSTEMS, INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Kirk Wm. Horton, P.O. Box 10061, Palo Alto, CA. 94303. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by grocery business houses (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, from the facilities of Kraft, Inc., at or near Garland, TX, to points in AR, KS, MO, OK, and CO, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Chicago, IL, or Washington, DC.)

MC 119435 (Sub-6F), filed January 30, 1979. Applicant: WADDELL TRANSFER, INC., P.O. Box 168, Atkins, VA 24311. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by the manufacturers and distributors of clay, clay products, concrete, concrete products, shale, shale products, and mortar mixes, (except commodities in bulk, in tank vehicles), between the facilities of (1) General Shale Products Corporation, at or near (a) Sparta and McMinnville, TN, (b) Huntsville, AL, (c) Louisville, KY, and (d) Indianapolis and Evansville, IN, (2) Sparta Concrete Company, at or near Sparta, TN, and (3) McMinnville Concrete Products, Inc., at or near McMinnville, TN, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, OK, and TX, under continuing contract(s) with General Shale Products

Corporation, of Johnson City, TN. (Hearing site: Washington, DC.)

MC 121654 (Sub-18F), filed February 13, 1979. Applicant: COASTAL TRANSPORT & TRADING CO., a Corporation, P.O. Box 7438, Savannah, GA 31408. Representative: Alan E. Serby, 3390 Peachtree Rd., 5th Floor, Atlanta, GA 30326. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *aluminum products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of aluminum products (except commodities in bulk), between the facilities of Consolidated Aluminum Corp., at or near Gulfport, MS, on the one hand, and, on the other, points in AL, GA, FL, NC, SC, TN, and VA. (Hearing site: St. Louis, MO.)

MC 123074 (Sub-13F), filed February 16, 1979. Applicant: M. L. ASBURY, INC., 1100 South Oakwood, Detroit, MI 48217. Representative: William B. Elmer, 12635 East Nine Mile Rd., St. Clair Shores, MI 48080. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *asphalt and asphalt products*, in bulk, in tank vehicles, from Detroit, MI, to points in DeKalb County, IN. (Hearing site: Detroit, MI.)

MC 123074 (Sub-14F), filed February 16, 1979. Applicant: M. L. ASBURY, INC., 1100 South Oakwood, Detroit, MI 48217. Representative: William B. Elmer, 21635 East Nine Mile Rd., St. Clair Shores, MI 48080. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *asphalt* and *asphalt products*, in bulk, in tank vehicles, from Detroit, MI, to points in Elkhart, LaPorte, Porter, and St. Joseph Counties, IN. (Hearing site: Detroit, MI.)

MC 123405 (Sub-65F), filed February 12, 1979. Applicant: FOOD TRANSPORT, INC., R. D. #1, Thomasville, PA 17364. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting beverage preparations, from the facilities of Coca Cola Co., Foods Division, at Auburndale, FL, to points in PA, NJ, NY, MD, OH, DE, and DC. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 124004 (Sub-49F), filed February 13, 1979. Applicant: RICHARD DAHN, INC., 620 West Mountain Rd., Sparta, NJ 07871. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *dry commodities*, in bulk, between the facilities of Allied Chemical Corp., at Solvay and Syracuse, NY, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, AR, and TX. (Hearing site: New York, NY, or Washington, DC.)

MC 124964 (Sub-30F), filed February 21, 1979. Applicant: J. M. BOOTH TRUCKING, INC., P.O. Box 907, Eustis, FL 32726. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *such commodities* as are dealt in or used by grocery and department stores (except commodities in bulk), and (2) *agricultural commodities* which are otherwise exempt from economic regulation under 49 U.S.C. § 10526(a)(6) (formerly Section 203(b)(6) of the Interstate Commerce Act, in mixed loads with the commodities described in (1) above, (except commodities in bulk), between Cossackie, Scotia, Waterford, and Waverly, NY, points in Hudson, Bergen, Essex, Passaic, Union, and Somerset Counties, NJ, and Westchester, Nassau, Suffolk, and Rockland Counties, NY, on the one hand, and, on the other, those points in FL on and south of FL Hwy 44, under continuing contract(s) with The Grand Union Company, of Elmwood Park, N.J. (Hearing site: New York, NY, or Jacksonville, FL.)

MC 124964 (Sub-32F), filed February 13, 1979. Applicant: J. M. BOOTH TRUCKING, INC., P.O. Box 907, Eustis, FL 32726. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *non-alcoholic beverages, and concentrates* (except frozen), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), and (3) *fruit salads*, in mixed loads with the commodities in (1) and (2) above, between the facilities of Doric Foods Corporation at or near Findlay, OH, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Doric Foods Corporation, of Mount Dora, Fl. (Hearing site: Jacksonville, FL, or Washington, DC.)

MC 126255 (Sub-6F), filed February 16, 1979. Applicant: BUTLER-JONES AIR FREIGHT, INC., Salisbury-Wicomico Airport, P.O. 1964, Salisbury, MD 21801. Representative: Peter A. Greene, 900 17th St., NW, Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and those requiring special equipment), between Salisbury-Wicomico Airport, at Salisbury, MD, and Philadelphia International Airport, at Philadelphia, PA. restricted to the transportation of traffic having an immediately prior or subsequent movement by air. (Hearing site: Washington, DC, or Salisbury, MD.)

MC 126844 (Sub-70F), filed February 5, 1979. Applicant: R.D.S. TRUCKING CO., INC., 1713 North Main Road, Vineland, NJ 08360. Representative: Kenneth F. Dudley, 611 Church Street, P.O. Box 279, Ottumwa, IA 52501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities*, (except articles of unusual value, classes A and B explosives, household goods, as defined by the Commission, commodities in bulk, and those requiring the use of special equipment), (1) from Chicago, IL, to points in CO, FL, GA, IL, IN, IA, KS, MI, MN, MO, NE, NJ, NY, OH, PA, TX, and WI, (2) from Philadelphia, PA, and points in NJ, to points in CO, FL, GA, IL, IN, IA, KS, MI, MN, MO, NE, NJ, NY, OH, PA, TX, and WI, and (3) from Marinette, WI, to Chicago, IL, and Philadelphia, PA. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 134064 (Sub-22F), filed February 13, 1979. Applicant: INTERSTATE TRANSPORT, INC., 1820 Atlanta Hwy, Gainesville, GA 30501. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum products* (except in bulk), from the facilities of Witco Chemical Corporation, at or near Bradford, PA, to points in AL, FL, GA, LA, SC, and MS. (Hearing site: Atlanta, GA, or Pittsburgh, PA.)

MC 134105 (Sub-31F), filed November 22, 1978 previously noticed in the Federal Register of February 20, 1979. Applicant: CELERYVALE TRANSPORT, INC., 1318 East 23rd Street, Chattanooga, TN 37404. Representative: Daniel O. Hands, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. To operate as a *common carrier*, by motor vehicle, in interstate or foreign

commerce, over irregular routes, transporting *confectionery and confectionery products,* (except commodities in bulk), from the facilities of Charms Company, at or near Covington, TN, to points in AL, AR, CO, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, NC, ND, OH, OK, SC, SD, TX, and WI, restricted to the transportation of traffice originating at the named origin and destined to the indicated destinations. (Hearing site: Chicago, IL.)

Note.—This republication correctly indicates that authority is sought to MO and not MD.

MC 136605 (Sub-91F), filed February 1, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *precast concrete products,* from Denver, CO, and Oshkosh, WI, to those points in the United States in and west of WI, IL, MO, AR, and LA (except AK and HI). (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 138144 (Sub-46F), filed February 13, 1979. Applicant: FRED OLSON CO., INC., 6022 W. State St., Milwaukee, WI 53213. Representative: W. D. Brejcha, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) (a) *bagged sand,* from Ottawa, IL, (b) *steel,* from Sterling, IL, and (c) *strand,* from Chicago, IL, to the facilities, of J. W. Peters & Sons at Burlington, WI, and (2) *precast concrete,* from the facilities of J. W. Peters & Sons, at Burlington, WI, to points in IA, IL, IN, and MI. (Hearing site: Chicago, IL, or Milwaukee, WI.)

Note.—Dual operations may be involved.

MC 139234 (Sub-6F), filed February 22, 1979. Applicant: BRUCE'S TRANSPORT SERVICE, INC., 5721 North Ventura Ave., Ventura, CA 93001. Representative: David P. Christianson, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *dry barium sulfate,* in bulk, between points in CA, OR, WA, NV, UT, AR, NM, MT, CO, ID, and WY, under continuing contract(s) with IMCO Services, a division of Halliburton Company, of Long Beach, CA. (Hearing site: Los Angeles, CA.)

MC 139615 (Sub-24F), filed February 16, 1979. Applicant: D.R.S. TRANSPORT, INC., P.O. Box 29, Oskaloosa, IA 52577. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *wrought iron pipe,* from the facilities of Unarco-Leavitt Division of Unarco Industries, Inc., at or near Chicago, Blue Island, and Evanston, IL, to points in IA and NE. (Hearing site: Chicago, IL.)

MC 141804 (Sub-180F), filed February 16, 1979. Applicant: WESTERN EXPRESS, division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *electric storage batteries,* (2) *parts and accessories* for batteries, and (3) *equipment and supplies* used in the production of (1) and (2) above, between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Gould, Inc. (Hearing site: Los Angeles or San Francisco, CA.)

MC 141804 (Sub-181F), filed February 21, 1979. Applicant: WESTERN EXPRESS, division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *building equipment, building materials, and building supplies,* between points in AZ, CA, OR, TX, UT, and WA, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, AR, and LA. (Hearing site: Los Angeles or San Francisco, CA.)

MC 141804 (Sub-182F), filed February 21, 1979. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *furniture and furniture parts,* (a) from points in AL, NC, IN, VA, MN, TN, MS, and TX to the facilities of Grantree Furniture Rental in AZ, CA, CO, MN, NV, OK, OR, TX, UT, and WA, and (b) from points in CA to the facilities of Grantree Furniture Rental in AZ, CO, MN, NV, OK, OR, TX, UT, and WA, restricted in (a) and (b) above, to the transportation of traffic destined to the indicated destinations. (Hearing site: Los Angeles or San Francisco, CA.)

MC 141804 (Sub-183F), filed February 22, 1979. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs,* from Fontana and City of Commerce, CA, to Florence, KY. (Hearing site: Los Angeles or San Francisco, CA.)

MC 141804 (Sub-184F), filed February 22, 1979. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *glass and glass containers,* from the facilities of Brockway Glass Company, in OH and PA, to points in CA, restricted to the transportation of traffic originating at the named origins. (Hearing site: Los Angeles or San Francisco, CA.)

MC 141804 (Sub-185F), filed February 22, 1979. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *vehicle accessories, vehicle parts, and vehicle supplies,* between points in CA, on the one hand, and on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Los Angeles or San Francisco, CA.)

MC 142254 (Sub-4F), filed February 16, 1979. Applicant: FRIEDL FUEL & CARTAGE, INC., 417 W. Whitewater St., Whitewater, WI 54190. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *paper, paper products, and printed matter,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk, in tank vehicles) between the facilities of Sturgis Newport Business Forms, a Division of Litton Industries, at or near Whitewater, WI, on the one hand, and, on the other, points in DE, IL, IA, IN, KS, KY, MD, MI, MN, MO, NE, NJ, ND, NY, NC, OH, PA, SD, TN, VA, and DC, restricted to the transportation of traffic originating at or

destined to the named facilities. (Hearing site: Madison or Milwaukee, WI)

MC 144855 (Sub-8F), filed February 20, 1979. Applicant: TRANS CONTINENTAL CARRIERS, 169 E. Liberty Ave., Anaheim, CA 92803. Representative: Elizabeth I. Abreu, 1800 United California Bank Bldg., 707 Wilshire Blvd., Los Angeles, CA 90017. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) (a) *such commodities* as are dealt in or used by retail department stores and retail drug stores, (except foodstuffs), and (b) *foodstuffs*, from Dallas and Houston, TX, Vernon, Torrance, and Culver City, CA, Philadelphia and Hanover, Pa, and Monticello, NY, to points in the United States (except AK and HI); (2) *bread*, between points in the United States (except AK and HI); and (3) *materials, equipment, and supplies* used in the manufacture and distribution of bread, (except commodities in bulk), from points in the United States (except AK and HI), to points in Los Angeles County, CA. (Hearing site: Los Angeles, CA.)

Note.—(1) Applicant states that it intends to convert the contract authority held by it in MC–139485 Sub 8 to common carrier authority. Applicant has requested coincidental cancellation of its authority in MC–139485 Sub 8, issued December 12, 1978, upon issuance of the certificate granted in this proceeding. (2) Dual operations may be involved. (Hearing site: Los Angeles, CA.)

MC 145525 (Sub-2F), filed February 22, 1979. Applicant: ERIEVIEW CARTAGE, INC., 100 Erieview Plaza, P.O. Box 6977, Cleveland, OH 44144. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *electric cables and aluminum articles*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between the facilities of Alcan Aluminum Corporation, at or near Bay St. Louis, MS, and Tucker, GA, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Alcan Aluminum Corp., of Cleveland, OH. (Hearing site: Cleveland, OH.)

MC 145865 (Sub-2F), filed February 12, 1979. Applicant: METONGA COMPANY, INC., 913 N. Hazeldell Avenue, Crandon, WI 54520. Representative: Nancy J. Johnson, Route 1, Box 169C, Crandon, WI 54520. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *nitro carbo nitrate*, in bags, from points in Ontonagon County, MI, to points in Outagamie County, WI. (Hearing site: Escanaba, MI, or Madison, WI.)

Note.—The authority granted here is limited in point of time to a period of five (5) years from the date of issuance.

MC 146194 (Sub-2F), filed February 16, 1979. Applicant: M. T. S. TRUCKING, INC., 113 Center St., Jackson, MN 56143. Representative: Val M. Higgins, 1000 First National Bank Bldg., Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *hides*, from the facilities of John Morrell & Co., at Estherville, IA, to Kansas City, MO. (Hearing site: Minneapolis-St. Paul, MN.)

MC 146234F, filed January 29, 1979. Applicant: BURNHAM TRUCKING COMPANY, INC., P.O. Box 393, 4101 West Burnham Street, Milwaukee, WI 53201. Representative: Daniel C. Sullivan, 10 South LaSalle Street, Chicago, IL 60603. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers and distributors of (1) buildings and building sections, and (2) iron and steel articles, (except commodities in bulk), between Milwaukee, WI, Baltimore, MD, Lima and Cincinnati, OH, Dallas, TX, Cullman, AL, Chicago, IL, and Los Angeles and Fremont, CA, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Inryco, Inc., of Milwaukee, WI, J. T. Ryerson & Sons, Inc., of Chicago, IL, and Inland Steel Company, of Chicago, IL. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 146484F, filed February 22, 1979. Applicant: F. J. CRIKOS TRUCKING, INC., 141 Heiman Lane, Cotati, CA 94928. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *alumina* (except in bulk), *aluminum, and aluminum products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, from the facilities of Kaiser Aluminum and Chemical Corporation, at Trentwood, Mead, and Tacoma, WA, to points in CA, under a continuing contract(s) with Kaiser Aluminum & Chemical Corp., of Oakland, CA. (Hearing site: San Francisco, CA, or Spokane, WA.)

**Passengers**

MC 146445F, filed February 21, 1979. Applicant: SHARP BUS LINES LIMITED, R.R. #2, St. George, Ontario, Canada NOE 1NO. Representative: Robert D. Gunderman, 710 Statler Bldg., Buffalo, NY 14202. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting *passengers and their baggage*, in special and charter operations, beginning and ending at all ports of entry on the international boundary line between the United States and Canada, and extending to points in the United States (including AK, but excluding HI). (Hearing site: Buffalo, NY.)

**Freight Forwarder**

FF 434 (Sub-4F), filed February 21, 1979. Applicant: TRANSCONEX, INC., 3000 N.W. 74 Ave., Miami, FL 33152. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, DC 20006. To operate as a *freight forwarder*, in interstate commerce, in the transportation of *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, motor vehicles, commodities in bulk, and those requiring special equipment), in containers or trailers, from Atlanta, GA, to Savannah, GA, restricted to the transportation of traffic (1) having an immediately subsequent movement by water or air and (2) destined to a point outside the United States. (Hearing site: Atlanta, GA)

[FR Doc. 79-17705 Filed 6-6-79; 8:45 am]
BILLING CODE 7035-01-M

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**[Notice No. 84]**

## Motor Carrier Temporary Authority Applications

May 21, 1979.

The following are notices of filing of applications for temporary authority under Section 210(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One

copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

**Motor Carriers of Property**

MC 381 (Sub-19TA), filed April 18, 1979. Applicant: GENOVA EXPRESS LINES, INC., P.O. Box 136, Williamstown, NJ 08094. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Batteries and (2) equipment, materials and supplies* used in the manufacture and sale of the commodities in (1) (except commodities in bulk), between the facilities of Exide Power Systems, Division of ESB Incorporated located at or near Sumter, SC, on the one hand, and, on the other, points in PA, NJ, NY, MD and DE, for 180 days. Supporting shipper(s): Exide Power Systems, Division ESB Incorporated, 10 Gibralter Road, Horshan, PA 19044. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 2091 (Sub-3TA), filed April 10, 1979. Applicant: REDDICK AUTO EXPRESS, INC., P.O. Box 47, North Syracuse, NY 13212. Representative: Herbert M. Canter, Esq. and Benjamin D. Levine, Esq., 305 Montgomery Street, Syracuse, NY 13032. *General commodities (except those of unusual value, Classes A and B explosives, household goods, as defined by the Commission, commodities in bulk and commodities requiring special equipment),* between Syracuse, NY on the one hand, and on the other, points in Madison and Oneida Counties, NY. Supporting shipper(s): There are 10 supporting shippers. Their statements may be examined at the office listed below or headquarters. Send protests to: Interstate Commerce Commission, U.S. Courthouse and Federal Bldg., 100 S. Clinton, St.—Room 1259, Syracuse, NY 13260.

MC 2960 (Sub-31TA), filed April 18, 1979. Applicant: ENGLAND TRANSPORTATION COMPANY OF TEXAS, 2301 McKinney St., Houston TX 77023. Representative: Lawrence A. Winkle, Suite 1125 Exchange Park, P.O. Box 45538, Dallas, TX 75245. Common carrier over irregular routes. *Chemicals in ocean going containers* from the facilities of Dow Chemical USA at or near Freeport, TX to Houston, TX. Restricted to traffic originating at the above origin and restricted to traffic having a subsequent movement by water. Seeking 180 days authority. An underlying ETA seeks 90 days. Supporting shipper(s): Sealand Service, Inc., 8402 Clinton Dr., Galena Park, TX 77547. Send protests to: John F. Mensing, 8610 Federal Bldg., 515 Rusk Ave., Houston, TX 77002.

MC 4941 (Sub-44TA), filed April 13, 1979. Applicant: QUINN FREIGHT LINES INC., 1093 North Montello Street, Brockton, MA 02403. Representative: Russell S. Callahan (same address as applicant). Authority sought to operate as a common carrier, over irregular routes in the transportation of *gypsum and gypsum products and materials, equipment and supplies used in the installation and distribution of gypsum and gypsum products,* from Buchanan, NY to points in PA for 180 days. Supporting shipper(s): Georgia-Pacific Corporation, 1062 Lancaster Ave., Rosemont, PA 19010. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 9291 (Sub-10TA), filed April 23, 1979. Applicant: CARROL BALL TRANSPORT, INC., P.O. Box 53, 312 E. Market, Centerville, KS 66014. Representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Suite 110–L, Topeka, KS 66612. (1) *Salvage Railroad Tracks, Railroad Ties and Salvage Bridge Steel,* between points and places in MO, IA, IL, AR, SD, NE, KS, OK and CO; and (2) *Items Necessary in the Construction and Repair of Railroads,* from Denver, CO, Columbus, MS, Houston and Texarkana, TX, Kansas City, MO, Madison and Carbondale, IL, Birmingham, AL, Atlanta, GA, E St. Louis, IL to points and places in MT, WY, NV, UT, CO, NM, ND, SD, NE, KS, OK, TX, MN, IA, IL, IN, KY, TN, MS, AL and GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ties & Tracks, Inc., 8500 Flora, Kansas City, MO 64131, and Smith-Miller Construction Co., Inc., P.O. Box 448, Pleasanton, KS 67405. Send protests to: Thomas P. O'Hara, DS, ICC, 256 Federal Bldg., 4444 S.E. Quincy, Topeka, KS 66683.

MC 52861 (Sub-63TA), filed February 5, 1979. Applicant: WILLS TRUCKING, INC., 4500 Rockside Road, Cleveland, OH 44131. Representative: John A. Wilson, 3185 Columbia Road, Richfield, OH 44286. *Scrap metal* (non-ferrous) in dump vehicles, from Belleville, MI, to Wabash, IN and Depue and Chicago, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Huron Valley Steel, 41000 Huron River Drive, Belleville, MI 48111. Send protests to: Mary Wehner, District Supervisor, Interstate Commerce Commission, 1240 E. Ninth Street, Cleveland, OH 44199.

MC 70151 (Sub-52TA), filed April 18, 1979. Applicant: UNITED TRUCKING SERVICE, INC., 8505 West Warren Avenue, Dearborn, MI 48126. Representative: LaVergne L. Adsit, 8505 West Warren Avenue, Dearborn, MI 48126. *General Commodities* (except those of unusual value, Class A and B Explosives, household goods as described by the Commission, commodities in bulk and commodities requiring special equipment). Serving Honda of America Manufacturing, Inc. plantsite located on U.S. Hwy 33, 7 miles northwest of Marysville, Union County, OH as an off-route point in connection with carriers presently authorized regular route operations to and from Columbus, OH. Supporting shipper(s): Honda of America Mfg. Inc. 6600 Busch Blvd. Suite 201, Columbus, OH 43229. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 82841 (Sub-252TA), filed April 11, 1979. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" St., Omaha, NE 68127. Representative: William E. Christensen, (same address as applicant). *Iron and steel articles,* from the facilities of Armco, Inc., at Ashland, KY and Middletown, OH to points in AR, KS, IA, MN, MO, NE, OK, TX, CO, MI, and LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Armco, Inc., 703 Curtis Street, Middletown, OH. Send

protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 94901 (Sub-6TA), filed April 25, 1979. Applicant: EDDY MOVING & STORAGE CO., INC., 4 Warehouse Lane, Elmsford, NY 10523. Representative: John L. Alfano, Esq., 550 Mamaroneck Avenue, Harrison, NY 10528. *Printed matter, documents and records,* between Dobbs Ferry, NY, on the one hand, and, on the other, Westport and Farmington, CT. An underlying ETA seeks 90 days authority. (For 180 days.) Supporting shipper(s): Stauffer Chemical Company, Dobbs Ferry, NY 10522. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

MC 94901 (Sub-7TA), filed April 25, 1979. Applicant: EDDY MOVING & STORAGE CO., INC., 4 Warehouse Lane, Elmsford, NY 10523. Representative: John L. Alfano, Esq., 550 Mamaroneck Avenue, Harrison, NY 10528. *Unexposed dry photo films, electrical appliances or instruments, X-Ray accessories (no tubes), paper and chemicals,* between Elmsford, NY, on the one hand, and, on the other, points in CT. An underlying ETA seeks 90 days authority. (For 180 days.) Supporting shipper(s): Picker Corporation, Elmsford, NY 10523. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

MC 101280 (Sub-11TA), filed April 18, 1979. Applicant: PARIS TRANSPORT, INC., 500 West Monroe St., Paris, IL 61944. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. *Corn and corn products* from Paris, IL, to Louisville, KY; Buffalo and Depew, NY, and points in IA, NM, and MO, (restricted to movements originating at the facility of Illinois Cereal Mills, Inc., at Paris, IL.) Supporting shipper(s): Illinois Cereal Mills, Inc., 615 South Jefferson St., Paris, IL 61944. Send protests to: Charles D. Little, District Supervisor, ICC, Rm. 414 Leland Office Bldg., 527 East Capitol Avenue, Springfield, IL 62701.

MC 104430 (Sub-56TA), filed April 24, 1979. Applicant: CAPITAL TRANSPORT CO., INC., P.O. Box 408, McComb, MS 39648. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. *Petroleum and petroleum products,* in bulk, in tank vehicles, from Montgomery, AL to points in MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Dynamic Industries, Inc., 2810 Glenda Ave., Ft. Worth, TX 76117. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 111201 (Sub-42TA), filed April 6, 1979. Applicant: J. N. ZELLNER & SON TRANSFER COMPANY, P.O. Box 91247, East Point, GA 30365. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Metal containers and tin plate, and materials, equipment and supplies used in the manufacture or distribution of metal containers and tin plate (except in bulk)* between the facilities of Crown Cork and Seal Company, Inc., at or near Atlanta, GA, on the one hand, and on the other, points in AL, FL, NC, SC and TN for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Crown Cork and Seal Company, Inc., 125 Ottley Drive, Atlanta, GA 30324. Send protests to: Sara K. Davis TA, ICC, 1252 W. Peachtree St., N.W., Room 300, Atlanta, GA 30309.

MC 112801 (Sub-228TA), filed March 24, 1979. Applicant: TRANSPORT SERVICE CO., 15 Salt Creek Lane, Hinsdale, IL 60521. Representative: Gene Smith (address same as applicant). *Liquefied Petroleum Gas, in bulk, in shipper-owned tank trailers,* from East Chicago, IN to points in GA, IL, IA, KY, MI, MN, MO, OH, PA and WI for 180 days. Supporting Shipper(s): Phillips Petroleum Company, 222 East Ogden Avenue, Hinsdale, IL 60521. Send protests to: Annie Booker, TA, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 113271 (Sub-55TA), filed April 17, 1979. Applicant: CHEMICAL TRANSPORT, P.O. Box 2644, Great Falls, MT 59403. Representative: Ray F. Koby, P.O. Box 2567, Great Falls, MT 59403. (a) *Empty beverage containers,* and (b) *empty beverage containers and incidential advertising and display materials when moving in the same vehicle at the same time* from points in King, Pierce and Snohomish Counties, WA to points in MT, for 180 days. Supporting shipper(s): Great Falls Coca-Cola Bottling Co., Inc., 1117 Seventh St. South, Great Falls, MT 59403. Send protests to: Paul J. Labane, D/S, ICC 2602 First Avenue North Billings, MT 59101.

MC 115311 (Sub-501TA), filed March 21, 1979. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Ralph B. Matthews, 235 Peachtree St., Suite 1200, Atlanta, GA 30303. *Limestone* from Cabbage Grove Quarry, Taylor County, FL to points in the States of AL, GA, NC, SC, and TN. for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Farmers Dolomite Lime Company, 900 Second St., N.E., P.O. Box 1018, Moultrie, GA 31768. Send protests to: Sara K. Davis TA, ICC, 1252 W. Peachtree St., N.W., Room 300, Atlanta, GA 30309.

MC 115730 (Sub-73TA), filed February 15, 1979. Applicant: THE MICKOW CORP., P.O. Box 1774, Des Moines, IA 50309. Representative; Cecil L. Geottsch, 1100 Des Moines Bldg., Des Moines, IA 50309. *Conveyor parts and structural components* from Gering, NE, to the Captain Mine Site at or near Percy, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Lockwood Corp., Highway 92—Box 190, Gering, NE 69341. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 115730 (Sub-74TA), filed April 6, 1979. Applicant: THE MICKOW CORP., P.O. Box 1774, Des Moines, IA 50306. Representative; Cecil L. Goettsch, 1100 Des Moines Bldg., Des Moines, IA 50309. (1) *steel tubing* from Warren, OH to Hydraulics Unlimited Mfg. Co. in Eaton, CO; (2) *hydraulic hoists* from Eaton, CO to points in and east of KS, ND, NE, OK, SD, and TX for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hydraulics Unlimited Mfg. Co., 600 Oak St., Eaton, CO 80615. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 115730 (Sub-75TA), filed April 11, 1979. Applicant: THE MICKOW CORP., P.O. Box 1774, Des Moines, IA 50306. Representative: Cecil L. Geottsch, 1100 Des Moines Bldg., Des Mines, IA 50309. *Iron and steel articles* from Norfolk, NE to points in the United States (except AK and HI) for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Vulcraft Division, Nucor Corporation, P.O. Box 59, Norfolk, NE 68701. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 115841 (Sub-704TA), filed April 26, 1979. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Representative: D. R. Beeler (same address as applicant). *Furniture, furnishings, accessories and fixtures* from North Carolina and Virginia to points in WI, IL, MN & MO, for 180 days. Supporting shipper(s): Wicks Furniture, 351 W. Dundee Road, Wheeling, IL 60090. Send protests to: Glenda Kuss, T/A, ICC, Suite A–422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 118130 (Sub-112TA), filed April 11, 1979. Applicant: SOUTH EASTERN

XPRESS, INC., P.O. Box 4550, Fort Worth, TX 76115. Representative: Billy R. Reid, P.O. Box 8335, Fort Worth, TX 76112. *Bananas, and agricultural commodities exempt from regulations under Section 203(b)(6) of the Act, in mixed loads with bananas,* from Port Heuneme, CA, to points in AZ, AR, CA, CO, ID, IA, KS, LA, MN, MO, MT, NE, NM, NV, ND, OK OR, SD, TX, UT, WA, and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Del Monte Bananas Company, P.O. Box 011940, Miami, FL 33101. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 118570 (Sub-5TA), filed April 19, 1979. Applicant: DE FAZIO EXPRESS, INC., 1028 Springbrook Avenue, Moosic, PA 18507. Representative: Edward M. Alfano, 550 Mamaroneck Avenue, Harrison, NY 10528. *Contract carrier: irregular routes: such commodities as are dealt in by a manufacturer of carbonated beverages and materials, equipment and supplies used in the production, manufacture and distribution of carbonated beverages,* except commodities in bulk, from the facilities of Cantrell & Cochrane, Inc. at Elizabeth and Garfield, NJ, to Baltimore and Landover, MD, Washington, DC, points in PA on and east of U.S. Hwy 15, Camp Hill, Carlisle, Gettysburg, Mechanicsburg, and Shiremanstown, PA for 180 days. Supporting shipper(s): Cantrell & Cochrane, Inc., 397 E. 54th Street, Elmwood Park, NJ 07407. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. Seventh Street, Room 620, Philadelphia, PA 19106.

MC 119630 (Sub-22TA), filed April 26, 1979. Applicant: VAN TASSEL, INC., 5th & Grand, Pittsburg, KS 66762. Representative: Dean Williamson, Suite 615 East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Plastic pipe, iron gate valves, and fire hydrants,* from Springfield, IL to points in IA, KS, & MO., for 180 days, common, irregular; supporting shipper: Contract Utility Sales Company, Springfield, IL 62708; send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 119710 (Sub-27TA), filed April 25, 1979. Applicant: SHUPE BROS. CO., P.O. Box 929, Greeley, CO 80631. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, D.C. 20005. Contract carrier: irregular route: *(A) Dry animal and poultry feeds and feed ingredients and materials and supplies used in the raising of livestock* (except liquid commodities, in bulk, in tank vehicles) from the facilities of Moorman Manufacturing Co., Herford, TX to points in NM, OK, KS, CO and NE; and (B) *equipment, materials and supplies* (except liquid commodities, in bulk, in tank vehicles) used in the manufacture of the commodities named in (A) above from the destination area to the described facilities of the named shipper; restricted to service performed under contract with Moorman Manufacturing Co., Quincy, IL, for 180 days. Underlying ETA filed seeking 90 days authority. Supporting shipper: Moorman Manufacturing Co., 1000 N. 30th St., Quincy, IL 62301. Send protests to: D/S Roger L. Buchanan, ICC, 492 U.S. Customs House, 721 19th St., Denver, CO 80202.

MC 124170 (Sub-123TA), filed April 2, 1979. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Representative: William J. Boyd, 600 Enterprise Drive, Suite 222, Oak Brook, IL 60521. *Meats,* from the facilities of Peschke Packing Co., Detroit, MI to Dallas and Laredo, TX, for 180 days. An underlying ETA for 90 days has been granted. Supporting shipper(s): Peschke Packing Co., 18615 Sherwood Avenue, Detroit, MI 48234. Send protests to: C. R. Flemming, D/S, ICC, 225 Federal Building, Lansing, MI 48933.

MC 124170 (Sub-124TA), filed April 12, 1979. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Representative: William J. Boyd, 600 Enterprise Drive, Suite 222, Oak Brook, IL 60521. *Bananas and agricultural commodities* exempt from regulation under Section 10526(a)(6) of the Interstate Commerce Act when transported in mixed loads with bananas, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Del Monte Banana Company, 1201 Brickel Avenue, Miami, FL 33101. Send protests to: C. R. Flemming, D/S, ICC, 225 Federal Building, Lansing, MI 48933.

MC 124251 (Sub-63TA), filed March 16, 1979. Applicant: JACK JORDAN, INC., 3681 South Dixie Road, (P.O. Box 689), Dalton, GA 30720. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Plastic liquid, adhesives and latex, liquid, in bulk, in tank vehicles* from DeKalb County, GA to Norfolk, VA and New Orleans, LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Industrial Adhesives, Inc., 359 Dekalb Industrial Way, Decatur, GA 30030. Send protests to: Sara K. Davis, TA, ICC, 1252 W. Peachtree St., NW., Room 300, Atlanta, GA 30309.

MC 124251 (Sub-64TA), filed March 19, 1979. Applicant: JACK JORDAN, INC., P.O. Box 689, Dalton, GA 30720. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Latex, liquid, in bulk, in tank vehicles* from the facilities of GAF Corporation at or near Chattanooga, TN to the facilities of GAF Corporation at or near Fullerton, PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): GAF Corporation, P.O. Box 6037, Chattanooga, TN 37401. Send protests to: Sara K. Davis, TA, ICC, 1252 W. Peachtree St., NW., Room 300, Atlanta, GA 30309.

MC 124251 (Sub-65TA), filed April 9, 1979. Applicant: JACK JORDAN, INC., P.O. Box 689, Dalton, GA 30720. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Liquid Chemicals, in bulk, in tank vehicles* from Fulton County, GA, to points in CO, TX, and UT, and points in the US in and east of MN, IA, MO, AR, and LA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): AZS Chemical Company, 762 Marietta Blvd., Atlanta, GA 30318. Send protests to: Sara K. Davis, TA, ICC, 1252 W. Peachtree St., NW., Room 300, Atlanta, GA 30309.

MC 124251 (Sub-66TA), filed April 11, 1979. Applicant: JACK JORDAN, INC., 3681 South Dixie Road, P.O. Box 689, Dalton, GA 30720. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. (1) *Overprint varnish, in bulk, in tank vehicles,* from the facilities of Mead Chemicals at or near Atlanta, GA to the facilities of Mead Packaging, Division of The Mead Corporation, at or near Buena Park, CA, (2) *Ethyl acetate, denatured ethyl alcohol and normal propyl acetate or alcohol,* from Longview, TX, to the facilities of Mead Chemicals at or near Atlanta, GA (3) *Isopropanol and methyl ethyl ketone,* from Baton Rouge, LA, to the facilities of Mead Chemicals at or near Atlanta, GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mead Chemicals, 949 Herndon St., NW., Atlanta, GA 30302. Send protests to: Sara K. Davis, TA, ICC, 1252 W. Peachtree St., NW., Room 300, Atlanta, GA 30309.

MC 124511 (Sub-55TA), filed April 5, 1979. Applicant: OLIVER MOTOR SERVICE, INC., P.O. Box 223, East Highway 54, Mexico, MO 65265. Representative: Leonard R. Kofkin, 39 South LaSalle Street, Chicago, IL 60603. *Steel articles,* from Chicago, IL and points within its commercial zone to the

facilities of A. B. Chance at Washington, MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): A. B. Chance Co., 100 West 10th, Washington, MO 63090. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 127730 (Sub-3TA), filed April 17, 1979. Applicant: A.A.A. CARTAGE, INC., 5938 South 13th, Milwaukee, WI 53221. Representative: Rolfe Hanson, 121 W. Doty St., Madison, WI 53703. *General commodities,* except Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring the use of special equipment and (2) *empty demountable steamship containers* between Hartford, WI, on the one hand, and Milwaukee, WI and Chicago, IL on the other hand restricted to shipments having an immediate prior or subsequent movement by rail or water, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Micro Design, Inc., 857 W. State St., Hartford, WI 53027. Send protests to: Gail Daugherty, Transportation Asst., ICC, Bureau of Operations, U.S. Federal Bldg. and Courthouse, 517 East Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 128021 (Sub-40TA), filed April 25, 1979. Applicant: DIVERSIFIED TRUCKING CORP., 309 Williamson Avenue, Opelika, AL 36901. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Contract, irregular: *(1) Charcoal, charcoal briquets, vermiculite, active carbon, hickory chips, charcoal lighter fluid, and charcoal grills and accessories* between all points in the United States, under a contract or contracts executed and in force with The Husky Industries, Inc., of Atlanta, GA, for 180 days. Supporting Shipper(s): Husky Industries, Inc., 62 Perimeter Center, East, Atlanta, GA 30346. Send protests to: Mabel E. Holston, T/A. ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 133541 (Sub-6TA), filed April 26, 1979. Applicant: McKIBBEN MOTOR SERVICE, INC., 494 W. Sharon Rd., Cincinnati, OH 45246. Representative: James Duvall, 220 W. Bridge St., Dublin, OH 43017. *Contract carrier:* irregular routes: *Containers, container ends, and materials equipment and supplies used in the manufacture, sale and distribution of containers,* between the facilities of Continental Can Company—U.S.A. at Sharonville, Worthington and Columbus, OH, on the one hand, and, on the other, points in IL, IN, KY, MI and TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Continental Can Company—U.S.A., J. R. Jandora, Regional Manager-Traffic & Distribution, 11550 Mosteller Rd., Cincinnati, OH 45241. Send protests to: Bureau of Operations, ICC, Wm. J. Green, Jr., Federal Bldg., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 135691 (Sub-29TA), filed April 26, 1979. Applicant: DALLAS CARRIERS CORP., 3610 Garden Brook Drive, Box 340080, Dallas, TX 75234. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. Contract carrier, irregular routes, *sugar, citric acid, and xylitol (a wood sugar), except in bulk,* from the facilities of Hoffmann-LaRoche, Inc., located at or near Belvidere, Nutley and Branchburg, NJ to Salisbury, MD; Decatur, GA; Dallas and Ft. Worth, TX; and points in CA, IL, IN, IA, MI, MO, NE, NC, OH and VA for 180 days. Underlying ETA for 90 days filed. Performed under a continuing contract(s) with Hoffmann-LaRoche, Inc. Supporting Shipper(s): Hoffmann-LaRoche, Inc., 340 Kingsland St., Nutley, NJ 07110. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 136500 (Sub-7TA), filed April 17, 1979. Applicant: SERVICE EQUIPMENT & TRUCKING, INC., Box 162, Mattoon, IL 61932. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. *Steel articles and parts* used in the manufacture of railroad freight cars for the account of Portec, Inc., Midwest Railcar Operations from points in the U.S. except AL and HI to Clinton, IL, and from Clinton, IL, to Novi, MI; Waukesha, WI; and Winder and Columbus, GA. Supporting shipper(s): Portec, Inc. Midwest Railcar Operations, 213 West Adams, Clinton, IL 61727. Send protests to: Charles D. Little, DS, ICC, RM 414 Leland Office Bldg., 527 East Capitol Ave., Springfield, IL 62701.

MC 136511 (Sub-46TA), filed April 13, 1979. Applicant: VIRGINIA APPALACHIAN LUMBER CORPORATION, 9640 Timberlake Road, Lynchburg, VA 24502. Representative: Elizabeth A. Purcell, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, D.C. 20001. *New furniture,* (1) from the facilities of Stanley Furniture Division of Mead Co. at Waynesboro, VA to points in CO, NM, WY, MT, and LA (2) from the facilities of Stanley Furniture Division of Mead Co. at Stanleytown, VA and West End, NC to points in CO, NM, WY, MT, TX, OK and LA, for 180 days. Supporting shipper(s): The Mead Corporation, Courthouse Plaza Northeast, Dayton, OH 45463. Send protests to: Charles F. Myers, DS, ICC, Room 10–502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 138841 (Sub-13TA), filed April 13, 1979. Applicant: BLACK HILLS TRUCKING CO., P.O. Box 2130, Rapid City, SD 57709. Representative: James W. Olson, P.O. Box 1552, Rapid City, SD 57709. *Swinging beef and beef products* from Gibbon, NE to Los Angeles, CA commercial zone for 180 days. Supporting shipper(s): Gibbon Pack, P.O. Box Q, Gibbon, NE 68840. Send protests to: J. L. Hammond, DS, ICC, Room 455, Federal Bldg., Pierre, South Dakota 57501.

MC 138841 (Sub-14TA), filed April 18, 1979. Applicant: BLACK HILLS TRUCKING CO., P.O. Box 2130, Rapid City, SD 57709. Representative: James W. Olson, P.O. Box 1552, Rapid City, SD 57709. *Beef* from Gibbon, NE to Portland, OR, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Gibbon Pack, P.O. Box Q, Gibbon, NE 68840. Send protests to: J. L. Hammond, DS, ICC, Room 455, Federal Bldg., Pierre, SD 57501.

MC 139190 (Sub-7TA), filed April 24, 1979. Applicant: KOCH TRUCK LINE, INC., 619 Iowa, Sabetha, KS 66534. Representative: Eugene W. Hiatt, 207 Casson Bldg., 603 Topeka Blvd., Topeka, KS 66603. *Contract carrier:* irregular routes: (1) *Agricultural Machinery and Parts and Flatbed Trailers,* from Marysville, KS to CA, CO, IA, ID, IL, IN, MN, MO, NY, OH, PA, WA, WI, WY; and (2) *Steel Products, Steel Plates, Steel Bars, Steel Structurals, Steel Tubing, Trailer Axles, Cast Iron Hubs, and Drums for Trailer Vehicles,* from IA, IL, OH and MO to Marysville, KS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Landoll Corporation, 1700 May Street, Marysville, KS 66508. Send protests to: Thomas P. O'Hara, DS, ICC, 256 Federal Bldg., 444 S. E. Quincy, Topeka, KS 66683.

MC 140511 (Sub-10TA), filed April 18, 1979. Applicant: AUTOLOG CORPORATION, 319 West 101 Street, New York, N.Y. 10025. Representative: Larsh B. Mewhinney, Esq., 555 Madison Avenue, New York, N.Y. 10022. *Used automobiles, vans and pickup trucks, and baggage, sporting equipment, and personal effects of the owners thereof, in truckaway service, in secondary movements,* between Boston, MA, Hartford, CT, New York, NY, Philadelphia and Pittsburgh, PA, on the one hand, and, on the other, Seattle, WA, Portland, OR, Salt Lake City, UT,

Denver, CO, San Francisco, San Diego and Los Angeles, CA, Phoenix, AZ, and Albuquerque, NM. An underlying ETA seeks 90 days authority. Supporting shipper(s): 1. Geo. E. Dewey Co., Inc., Bloomfield, CT. 2. ABC-TV, 60 Jane St., New York, NY 10014. 3. Grand Prix Auto Wholesalers Inc., 1531 Jerome Ave., New York, N.Y. 10452. 4. Herbert Weissenstein, 800 West End Ave., New York, NY 10025. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

MC 141350 (Sub-2TA), filed April 2, 1979. Applicant: BOBBY STEVENS HAULING CONTRACTORS, INC., P.O. Box 207, Fortson, GA 31808. Representative: Bobby Stevens (same as applicant). *Road building materials and aggregates in bulk in dump-type vehicles* from points in GA to points in Autauga, Barbour, Bullock, Butler, Calhoun, Chambers, Chilton, Clay, Cleburne, Coffee, Coosa, Crenshaw, Dale, Elmore, Geneva, Henry, Houston, Lee, Lowndes, Macon, Montgomery, Pike, Randolph, Russell, Talladega, and Tallapoosa Counties, AL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Brady Williamson Construction Company, P.O. Box 6308, Columbus, GA 31907. Send protests to: Sara K. Davis TA, ICC, 1252 W. Peachtree St. NW., Room 300, Atlanta, GA 30309.

MC 141921 (Sub-53TA), filed March 6, 1979. Applicant: SAV-ON TRANSPORTATION, INC., 143 Frontage Rd., Manchester, NH 03108. Representive: John A. Sykes (same address as applicant). *Swimming pools, swimming pool parts, and accessories,* from East Greenwich, RI, to points in CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Weatherking Products, Inc., 1485 South County Tr, East Greenwich, RI 02818. Send protests to: Ross J. Seymour, DS, ICC, Rm 3, 6 Loudon Rd., Concord, NH 03301.

MC 142040 (Sub-4TA), filed April 24, 1979. Applicant: AMBER DELIVERY SERVICE INC., 25 Franklin St., Malden, MA 02148. Representive: Joseph T. Bambrick, Jr., P.O. Box 216, Douglassville, PA 19518. Authority sought to operate as a common carreir, over irregular routes, in the transportation of *general commodities (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) limited to individual shipments not exceeding 500 pounds* between all points in ME, NH, RI, CT and NY for 180 days. Supporting shipper(s): RCA Corp., Burlington, MA, Data General, Westboro, MA, Microwave Associates, Burlington, MA, The Foxboro Co., Foxboro, MA, Gould Inc., Andover, MA and GTE International Sys. Corp., Waltham, MA. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 142181 (Sub-5TA), filed April 25, 1979. Applicant: LIBERTY CONTRACT CARRIER, INC., P.O. Box 1104, 214 Hermitage Ave., Nashville, TN 37203. Representive: Robert L. Baker, 618 United American Bank Bldg., Nashville, TN 37219. *Contract carrier:* irregular routes: *(1) Foodstuffs, and (2) Commodities used in the manufacture and distribution of foodstuffs,* between the facilities utilized by Ragu' Foods, Inc., at or near Owensboro and Henderson, KY and Evansville, IN, on the one hand, and on the other, points in IA, KS, MO, NE, NC, & OK, for 180 days. Supporting shipper(s): Ragu' Foods, Inc., 33 Benedict Place, Greenwich, CT 06830. Send protests to: Glenda Kuss, T/A, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 142431 (Sub-8TA), filed April 6, 1979. Applicant: WAYMAR TRANSPORT CORP., 1755 S.E. 108th St., Runnells, IA 50237. Representive: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Fresh meat* from the facilities of Swift & Co. at Rochelle, IL to Cincinnati, OH, and Huntington, WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Swift & Co., 115 W. Jackson Blvd., Chicago, IL 60604. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 142831 (Sub-18TA), filed April 26, 1979. Applicant: HAMRIC TRANSPORTATION, INC., 3318 E. Jefferson, Grand Prairi, TX 75051. Representative: D. Paul Stafford, Winkle and Wells, Suite 1125, Exchange Park, P.O. Box 45538, Dallas, TX 75245. *Metal tubing,* (1) from Allenport and Beaver Falls, PA; Alliance, Lorain, Canton, and Shelby, OH; Milwaukee, WI; Elkhart and Gary, IN; Chicago and Fairbury, IL; Houston, TX; and Phoenix, AZ, to the facilities of Kilsbuy Tubesupply located a Tulsa, OK; Denver, CO; Grand Prairie and Houston, TX; Portland, OR; Los Angeles and San Leandro, CA; Seattle, WA; Charlotte, NC; Little Rock, AR; New Orleans, LA; Wichita, KS; and Birmingham, AL, restricted to traffic destined to the facility of Kilsby Tubesupply; (2) between the facilities of Kilsby Tubesupply located at Tulsa, OK; Denver, CO; Grand Prairie and Houston, TX; Portland, OR; Los Angeles and San Leandro, CA; Seattle, WA; Charlotte, NC; Little Rock, AR; New Orleans, LA; Wichita, KS; and Birmingham, AL, restricted to traffic originating at and destined to the facilities of Kilsby Tubesupply for 180 days. Underlying ETA filed. Supporting shipper(s): Kilsby Tubesupply, 2200 West Marshall, Grand Prairie, TX 75050. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, TX 75242.

MC 142941 (Sub-44TA), filed April 17, 1979. Applicant: SCARBOROUGH TRUCK LINES, INC., 1313 N. 25th Ave., Phoenix, AZ 85009. Representative: Lewis P. Ames, 111 W. Monroe, 10th Floor, Phoenix, AZ 85003. *Such commodities as are dealt in by wholesale, retail, chain an grocery food business houses, and discount houses (except commodities in bulk),* from the facilities of S. C. Johnson & Son, Inc., at or near Waxdale, WI to AZ, CA, CO and NV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): S. C. Johnson & Son, Inc., 1525 House St., Racine, WI 53403. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025. Supporting shipper(s): S. C. Johnson & Son, Inc., 1525 House St., Racine, WI 53403. Send Protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 143501 (Sub-2TA), filed March 30, 1979. Applicant: R.G.C. CARGO CARRIERS, INC., P.O. Box 523, South Holland, IL 60473. Representative: James E. Savitz, Suite 145, 4 Professional Drive, Gaithersburg, MD 20760. *Contract carrier:* Irregular route, *foodstuffs and related advertising materials and supplies and display racks,* from Sparks, NV to Thornton, IL for 180 days. Supporting shipper(s): Specialty Brands, Inc., P.O. Box 2187, South San Francisco, CA 94080. Send protests to: Annie Booker, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 143610 (Sub-13TA), filed February 23, 1979, published in the **Federal Register** of April 2, 1979, and republished this issue. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, AZ 85301. Applicant's representative: Charles E. Creager, P.O. Box 1417, Hagerstown, MD 21740. Contract: Irregular: (1) *Foods, foodstuffs, food treating compounds, chemicals, preservatives and additives* (except in bulk), *advertising paraphernalia, and*

*materials, equipment and supplies* used in the manufacture, preparation, sale and distribution of spices, extracts, convenience foods, snack foods, confectionery products, food dressing, and foodstuffs and (2) *commodities,* the transportation of which are exempt from regulation under the provisions of section 203(b) of the Interstate Commerce Act in mixed loads with the commodities described in (1) above, between points in the United States except Alaska and Hawaii, restricted to the movement of traffic moving from, to or between the manufacturing facilities, plants, warehouses, distribution centers, processing and/or manufacturing contractors and shipping and receiving facilities of or used by McCormick & Company, Inc., its divisions and its subsidiary corporations, and limited to a service performed under continuing contracts with McCormick & Company, Inc. of Baltimore, MD. Shipper: McCormick and Co., Inc. Send protests to Thomas Klobas, ICC, 2020 Federal Bldg., 230 N. First Avenue, Phoenix, AZ 85025. The purpose of this republication is to redescribe the authority sought.

MC 143701 (Sub-9TA), filed April 4, 1979. Applicant: HODGES FREIGHT LINES, INC., 5733 Airline Highway, Suite 805, Metairie, LA 70003. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. *Prepared animal food, pet supplies and materials and supplies* used in the manufacture thereof, (except commodities in bulk) between the plantsite of Hills Division of Riviana Foods, Inc. at or near Topeka, KS; Commerce City and Hayward, CA; and Miami, FL on the one hand and on the other, points and places in the U.S. (except AK, HI, ME, NH, VT, CT, NY and DE), for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Hills Division of Riviana Foods, Jefferson and River Boulevard, Topeka, Kansas. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 143701 (Sub-10TA), filed April 25, 1979. Applicant: HODGES FREIGHT LINES, INC., (formerly William Oberste, Inc.), 5733 Airline Highway, Suite 805, Metairie, LA 7000s. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. *Bananas, and agricultural commodities exempt from regulation under Section 203(b)(6) of the Interstate Commerce Act, in mixed loads with bananas having an immediately prior movement by water* from the facilities of Best Banana, Inc., at or near Norfolk, VA to the States of IL, MI, OH, NY, MA, PA, MD, WV, VA, DC, NC, SC, MO, and IN, for 180 days. Applicant has also filed underlying ETA for 90 days. Supporting shipper(s): Best Banana, Inc., 3616 Virigina Beach, Norfolk, VA 23502. Send protests to: Robert J. Kirspel, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 143730 (Sub-3TA), filed March 9, 1979. Applicant: PENINSULA TRUCKING CO., INC., 705 Morehouse Dr., New Castle, DE 19720. Representative: Richard M. Ochroch, 316 S. 16th St., Philadelphia, PA 19103. Contract carrier, irregular routes, *Meat, meat products, by-products and articles used and distributed by meat packing houses,* between Philadelphia, PA, on the one hand, and, on the other, points in GA, FL, NC, SC, TN, WV and VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hygrade Food Products Corp., P.O.B. 4471, Detroit, MI 48219. Send protests to: T. M. Esposito, Trans. Asst., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 144461 (Sub-2TA), filed April 23, 1979. Applicant: BILLY M. EDMONDSON, d/b/a EDMONDSON SWIFT MEAT TRANSPORT, Route 1, Georgetown, GA 31754. Representative: Dixie Newhouse, Suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. *Contract carrier,* irregular route, *Foodstuffs in vehicles equipped with temperature control* from the facilities of or utilized by M&M/ Mars Snack-Master Division, at Albany, GA to Arlington, TX; Waco, TX, Los Angeles and San Francisco, CA, Denver, CO, Salt Lake City, UT, and Kansas City, MO, under a continuing contract with M&M/Mars Snack-Master Division, Albany, GA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): M&M/Mars Snack-Master Division, a division of Mars Inc., P.O. Box 3289, Albany, GA. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 144740 (Sub-13TA), filed March 20, 1979. Applicant: L. G. DE WITT, INC., P.O. Box 70, Ellerbe, NC 28338. Representative: Terrence D. Jones, 2033 K Street NW., Suite 300, Washington, DC 20006, *Contract* Carrier-Irregular routes; *Foodstuffs* from the facilities of or utilized by Foodways National Inc., located at Wethersfield and Hartford, CT and New Paltz, NY to points in CA, FL, GA, IL, KS, MI, MN, MO, OH, TX, and WI, for 180 days. Supporting shipper(s): Foodways National, Inc., 1000 Silas Deane Highway, Wethersfield, CT 06109. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 145870 (Sub-11TA), filed April 16, 1979. Applicant: L-J-R HAULING, INCORPORTED, P.O. Box 899, Dublin, Virginia 24084. Representative: Wilmer B. Hill, Attorney at law, Suite 805, 666 Eleventh Street NW., Washington, D.C. 20001. *Iron and steel articles,* from points in AL, IL, IN, KY, MD, OH, PA, TN, and WV to the facilities of Enterprise Fabricators, Inc., at Bristol, VA, for 180 days. An underlying ETA seeks authority for 90 days. Supporting shipper(s): Enterprise Fabricators, Inc., P.O. Box 151, Bristol, VA 24201. Send protests to: Charles F. Myers, DS, ICC, Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 145950 (Sub-16TA), filed April 5, 1979. Applicant: BAYWOOD TRANSPORT, INC., 2611 University Parks Drive, Waco, TX 76706. Representative: Arthur Grimes, (same address as applicant). *Meat, meat products, and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions of Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk),* from the facilities of Armour Food Company at or near Bayonne and Port Newark, NJ, to Chicago, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Armour Food Company, Greyhound Tower, Phoenix, AZ 85077. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27, Fed. Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 145950 (Sub-17TA), filed April 23, 1979. Applicant: BAYWOOD TRANSPORT, INC., P.O. Box 2611, Waco, TX 76076. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite 115, Fort Worth, TX 76112. *Meats, meat products, meat by-products, and articles distributed by meat packinghouses as described in Sections A, B and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk),* from the facilities used by Swift and Company at or near Kansas City, KS, to points in CA and OR, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Swift & Company, 115 W. Jackson Blvd., Chicago, IL 60604. Send protests to: Martha A. Powell, T/A, ICC, 9A27 Fed. Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 145950 (Sub-18TA), filed April 23, 1979. Applicant: BAYWOOD

TRANSPORT, INC., P.O. Box 2611, Waco, TX 76076. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite 115, Fort Worth, TX 76112. *Meats, meat products, meat by-products, and articles distributed by meat packinghouses as described in Sections A, B and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk),* from the facilities used by Swift and Company at or near Rochelle and St. Charles, IL, to points in CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Swift & Company, 115 W. Jackson Blvd., Chicago, IL 60604. Send protests to: Martha A. Powell, T/A, ICC, 9A27 Fed. Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 145950 (Sub-19TA), filed April 23, 1979. Applicant: BAYWOOD TRANSPORT, INC., P.O. Box 2611, Waco, TX 76076. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite 115, Fort Worth, TX 76112. *Frozen dessert topping,* from the facilities used by Swift and Company at Holland, Michigan, to points in CA, MA and NJ, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Swift & Company, 115 W. Jackson Blvd., Chicago, IL 60604. Send protests to: Martha A. Powell, T/A, ICC, 9A27 Fed. Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 145950 (Sub-20TA), filed April 23, 1979. Applicant: BAYWOOD TRANSPORT, INC., P.O. Box 2611, Waco, TX 76076. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite 115, Fort Worth, TX 76112. *Shortening, lard, and margarine,* from the facilities used by Swift and Company, at or near Bradley, IL, to points in CA, NM, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Swift & Company, 115 W. Jackson Blvd., Chicago, IL 60604. Send protests to: Martha A. Powell, T/A, ICC, 9A27 Fed. Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 146181 (Sub-2TA), filed April 12, 1979. Applicant: NORTHEAST TRANSPORT COMPANY, P.O. Box 1252, 1325 Paterson Plank Road, Secaucus, NJ 07094. Representive: Rick A. Rude, Suite 801, 1730 Rhode Island Avenue, NW, Washington, DC 20036. Contract irregular. *Such commodities* as are dealt in by manufacturers and distributors of printed matter, paper and paper products. Between East Greenville, PA and Franklin, KY., for 180 days. Supporting shipper(s): Brown Printing Company, Inc., Hwy 14 West, Waseca, MN 56903. Send protests to: Robert E. Johnston, D/S, ICC, 9 Clinton St., Newark, NJ 07102.

MC 146240 (Sub-1TA), filed March 8, 1979. Applicant: TOPCO TRANSPORT, INC., North-South Road, Scranton, PA 18504. Representive: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517. *General commodities* (except Class A and B explosives, household goods as defined by the Commission, and commodities in bulk), between the facilities of Topmark Distribution Center, Inc., Scranton, PA, on the one hand, and, on the other, points in NY, NJ, DE, MD, MA, RI, CT, OH, NH, ME and DC, restricted to shipments having an origin and destination at Topmark Distribution Center, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Topmark Distribution Center, Inc., North-South Road, Scranton, PA 18504. Send protests to: P. J. Kenworthy, D/S, ICC, 314 US Post Office Bldg., Scranton, PA 18503.

MC 146360 (Sub-2TA), filed April 24, 1979. Applicant: FLOYD SMITH, JR. TRUCKING, 5303 Valle Grande, Meridian, ID 83642. Representive: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Chimney pipe and materials and supplies used in the installation and manufacture thereof,* (1) from Logan, OH to Belmont, Ca and Nampa, ID (2) from Nampa, ID to Belmont, CA, Logan, OH, and Dallas, TX, (restricted to traffic originating at or destined to the facilities of Metalbestos Systems, Inc.), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Metalbestos Systems, Inc., P.O. Box 372, 1820 E. Fargo Ave., Nampa, ID 83651. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 146360 (Sub-3TA), filed April 24, 1979. Applicant: FLOYD SMITH, JR. TRUCKING INC., 5303 Valle Grande, Meridian, ID 83642. Representive: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Carpets, carpet pads and materials and supplies used in the installation thereof,* (1) from points in GA to the facilities of Crown Distributing Co. at or near Salt Lake City, UT, Boise and Pocatello, ID and (2) from Salt Lake City, UT to the facilities of Crown Distributing Co. at or near Boise and Pocatello, ID, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Crown Distributing Co., 960 West, 2610 South, Salt Lake City, UT 84119. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 146360 (Sub-4TA), filed April 11, 1979. Applicant: FLOYD SMITH, JR. TRUCKING, INC., 5303 Valle Grande, Meridian, ID 83642. Representive: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Bananas and pineapples,* from Mobile, AL, Galveston and Corpus Christi, TX, Gulfport, MS, and Wilmington, CA to Saskatoon, Saskatchewan, Canada. Supporting shipper(s): The Codville Co., P.O. Box 750, 2820 Jasper Ave., Saskatoon, Saskatchewan, Canada S7K 3L9. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 146651 (Sub-1TA), filed April 16, 1979. Applicant: ARTHUR W. COULTER, d.b.a. A. W. COULTER TRUCKING, 24280 Avenue 95, Terra Bella, CA 93270. Representative: Earl N. Miles, Jr., 3704 Candlewood Drive, Bakersfield, CA 93306. *Lumber,* from points in Fresno and Tulare Counties, CA to points in the State of AZ, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting Shipper(s): Sierra Forest Products, P.O. Box 608, Terra Bella, CA 93270. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 146800 (Sub-1TA), filed April 13, 1979. Applicant: VERMILLION BROTHERS, INC., R.R. No. 2, Box 2, Keokuk, IA 52632. Representative: George Vermillion, Jr. (same as applicant). *Meat, meat products, meat by-products and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in Motor Carrier Certificates 61 MCC 209 and 766 (except hides and commodities in bulk), from Chicago, IL to points in CA for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Rose Packing Company, Inc., R.R. No. 3 S. Barrington Rd., Barrington, IL 60010. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 146801 (Sub-1TA), filed April 16, 1979. Applicant: HAROLD R. ANDERSEN d.b.a. HAROLD ANDERSEN MOVING SERVICE, 123 East 17th St., South Sioux City, NE 68776. Representative: D. Douglas Titus, Suite 510, Benson Building, Sioux City, IA 51101. *Contract carrier:* irregular routes: *Household appliances and articles distributed by household appliance distributors,* from Sioux City, IA to all points in NE and SD, for 180 days, under contract with Jones Distributing Co. An underlying ETA seeks 90 days authority. Supporting

Shipper(s): Jones Distributing Co., 2650 Bridgport, Sioux City, IA 51111. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146820 (Sub-1TA), filed April 16, 1979. Applicant: B & G TRUCKING, INC. 77 East Wilson Bridge Road, Worthington, Ohio 43085. Representative: David A. Turano, 100 East Broad Street, Columbus, Ohio 43215. Contract-irregular. (1) *Pulpboard* NOI in rolls, not corrugated, between Circleville, OH, on the one hand, and, on the other, points in IN, IL, KY and MI. (2) *Scrap or waste paper* for recycling purposes between the States of IL, IN, OH, MI and KY. (3) *Pulpboard* NOI in rolls or sheets, not corrugated between Carthage, IN, on the one hand, and, on the other, points in KY, PA, IL and OH. (4) *Fibreboard boxes corrugated KDF* between Anderson, IN, on the one hand, and, on the other, points in IL, KY, MI and OH. (5) *Fibreboard boxes corrugated KDF* between Ravenna, OH, on the one hand, and, on the other, points in PA, MI, IN, WV, and IL. (6) *Fibreboard boxes corrugated KDF* between Blue Ash, OH, on the one hand, and, on the other, points in IL, IN, KY, MI, and WV. (7) *Fibreboard cans,* straight sided, set up, between Piqua, OH, on the one hand, and, on the other, points in PA, IN, IL, KY, and MI. (8) *Fibreboard cans,* straight sided, set up, and materials and supplies, between Jeffersonville, IN, on the one hand, and, on the other, points in MI, IL, and KY. (9) *Fibreboard boxes,* other than corrugated, KDF between Muncie, IN, on the one hand, and, on the other, points in MI, OH, IL, and KY. (10) *Pulpboard* NOI, in rolls or sheets, corrugated or not corrugated, fiberboard boxes corrugated KDF, fiberboard boxes other than corrugated KDF, between Carol Stream, IL, on the one hand, and, on the other, points in IN, OH and MI. (11) *Pulpboard* NOI, in rolls or sheets, corrugated or not corrugated, fiberboard boxes corrugated KDF, fiberboard boxes other than corrugated KDF, between Chicago, IL, on the one hand, and, on the other, points in IN, OH, and MI. Restricted to service performed under contract or continuing contracts with Container Corporation of America. Underlying ETA seeks 90 days authority. Supporting shipper(s): Container Corporation of America, 300 East North Ave., Carol Stream, IL 60187. Send protests to: ICC, WM Jr. Green Jr. Federal Bldg., 600 Arch Street, Philadelphia, PA 19106.

**Passenger Authority**

MC 123481 (Sub-3TA), filed April 25, 1979. Applicant: BROWN LINES, INC., 22 First Street West, Kalispell, MT 59901. Representative: Charles A. Webb, Room 800 South, 1800 M Street N.W., Washington, DC 20036. *Passengers and their baggage and express shipments in the same vehicle with passengers* from Kalispell, MT via U.S. Hwy 93 North to Whitefish, MT, thence South via U.S. Hwy 93 to junction of MT Hwy 40, thence East over MT Hwy 40 to junction of U.S. Hwy 2, thence East via U.S. Hwy 2 to Shelby, MT and return over the same route serving all intermediate points, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are seven supporting shippers. Their statements may be examined at the office listed below and headquarters. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 123481 (Sub-4TA), filed April 25, 1979. Applicant: BROWN LINES, INC., 22 First Street West, Kalispell, MT 59901. Representative: Charles A. Webb, Room 800 South, 1800 M Street N.W., Washington, DC 20036. *Passengers and their baggage with express shipments in the same vehicle with passengers* (1) from Kalispell, MT West to Troy, MT via U.S Hwy 2, thence East to Junction MT Hwy 202, thence South on MT Hwy 202 to MT Hwy 200, thence Northwest to Sandpoint, ID and return over the same route serving allintermediate points, and (2) from Kalispell, MT South on U.S. Hwy 93 to Junction MT 28, thence Southwest on MT Hwy 28 to Plaint, MT at the Junction on MT Hwy 200, thence Northwest on MT Hwy 200 to Sandpoint, ID and return over the same route serving all intermediate points and the off-route points of Elmo, Lonepine and Hot Springs, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Camas Hot Sprins, Drawer M, Hot Springs, MT 59845, Thompson Falls-Trout Creek-Noxon Chamber of Commerce, Box 493, Thompson Falls, MT 59873, Lake Aire Motel, P.O. Box 306, Hope Lake, ID 83836. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

By the Commission.

**H. G. Homme, Jr.,**

*Secretary.*

[FR Doc. 79-17706 Filed 6-6-79; 8:45 am]

BILLING CODE 7035-01-M

**[Notice No. 86]**

## Motor Carrier Temporary Authority Applications

May 24, 1979.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

**Motor Carriers of Property**

MC 4405 (Sub-603TA), filed May 8, 1979. Applicant: DEALERS TRANSIT, INC., P.O. Box 236, Tulsa, OK 74101. Representative: Leonard L. Bennett (same address as applicant). *Commodities which because of size or weight require the use of special equipment or handling and parts thereof or accessories thereto when transported with such commodities,* from Belle Chase, Harvey and New Orleans, LA, to

points in IL, IN, IA, MN, & WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Power Enterprises, Inc., P.O. Box 6261, New Orleans, LA 70174. Avondale Ship Yards, Harvey, LA 70058. M. G. Maher & Co., Inc., 442 Canal Street, New Orleans, LA 70130. Gulf-Eng. Co., Inc., 1000 St. Peters St., New Orleans, LA 70130. Mechanical Equipment Company, Inc., 861 Carondelet St., New Orleans, LA 70130. Send protests to: D/S, ICC, Room 240, Old Post Office, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 8515 (Sub-16TA), filed March 20, 1979. Applicant: TOBLER TRANSFER, INC., Jct. Int. 80 and IL 89, Spring Valley, IL. Representative: Leonard R. Kofkin, 39 South LaSalle Street, Chicago, IL 60603. Regular Routes: *General commodities,* (except those of unusual value, high explosives, livestock, household goods, commodities in bulk, and those requiring special equipment): (1) Between Davenport, IA and Princeton, IL, serving no intermediate points; From Davenport, IA over Interstate Highway 80 to Princeton, IL and return over the same route; (2) Between Davenport, IA and Rockford, IL, serving the intermediate point of Sterling, IL, From Davenport, IA over IL Highway 2 to Rockford, IL and return over the same route; (3) Between Davenport, IA and Peoria, IL, serving the intermediate point of Galesburg, IL, From IA over Interstate Highway 80 to junction Interstate Highway 74, then over Interstate Highway 74 to Peoria, IL and return over the same route; (4) Between Rockford, IL and Mendota, IL, serving Mendota, IL as a point of joinder only, From Rockford, IL over U.S. Highway 51 to Mendota, IL and return over the same route; and (5) Between Davenport, IA and Galva, IL, serving no intermediate points, From Davenport, IA over Interstate Highway 80 to junction Interstate Highway 74, then over Interstate Highway 74 to junction IL Highway 17, then over IL Highway 17 to junction U.S. Highway 34, then over U.S. Highway 34 to Galva, IL and return over the same route, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): 48 Supporting shippers. Send protests to: Annie Booker, TA, ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 8535 (Sub-84TA), filed May 11, 1979. Applicant: GEORGE TRANSFER AND RIGGING COMPANY, INC., P.O. Box 500, Parkton, MD 21120. Representative: Charles J. McLaughlin, (same as above). *Iron and Steel articles,* from the facilities of Armco Inc., located at Ashland, KY and Middletown, OH to IL, IN and MI, for 90 days. An underlying ETA seeks 90 days. Restricted to traffic originating at the above facilities. Supporting shipper(s): Charles W. Hall, Armco Inc., Middletown, OH 45043. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 15975 (Sub-14TA), filed April 17, 1979. Applicant: BUSKE LINES, INC., 123 West Tyler Ave., Litchfield, IL 62056. Representative: Howard Buske (same address as applicant). Common Irregular: *Air conditioners, washers, dryers, and materials, equipment and supplies* used in the manufacture, distribution, and repair of the above name commodities. Restricted against the transportation of commodities in bulk, or those because of size and weight, require special equipment, between the facilities of Fedders Corp. at Edison, NJ; Buffalo, NY; Frederick and Elkton, MD; and Effingham and Herrin, IL, on one hand, and, points in U.S., on the other (except AK and HI), for 180 days. An underlying ETA seeks 90 days. Supporting shipper(s): Fedders Corp., Woodbridge Ave., Edison, NJ 08817. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, Rm. 414, Leland Office Bldg., 527 East Capitol Ave., Springfield, IL 62701.

MC 24784 (Sub-26TA), filed May 7, 1979. Applicant: BARRY, INC., 463 South Water, Olathe, KS 66061. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. *Iron and Steel Articles,* from the facilities of Bull Moose Tube Company at Gerald, MO to points in AR, CO, IA, KS, LA, NE, OK and TX, for 180 days. Supporting shipper(s): Bull Moose Tube Co., Highway 50, P.O. Box 214, Gerald, MO 63037. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 26825 (Sub-3TA), filed April 26, 1979. Applicant: ANDREWS VAN LINES, INC., Seventh and Park Avenue, P.O. Box 1609, Norfolk, NE 68701. Representative: Steven K. Kuhlmann, P.O. Box 82028, Lincoln, NE 68501. *Pillows and padding,* from Middletown, IN to points in the States in and west of WI, IL, MO, AR, and LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Liebhardt Mills, Inc., P.O. Box 121, State Road 236, Middletown, IN. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 30844 (Sub-648TA), filed May 2, 1979. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 2125 Commercial St., P.O. Box 5000, Waterloo, IA 50702. Representative: John P. Rhodes (same as applicant). *Meats, meat products, meat by-products, and articles distributed by meat packinghouses as described in Sections A, C and D of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities bulk),* between Britt and Mason City, IA, on the one hand, and, on the other, points in and east of ND, SD, NE, CO, OK and TX, restricted to shipments originating at or destined to the facilities utilized by Lauridsen Foods, Inc., at or near Britt, IA and Armour and Co. at Mason City, IA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Armour and Co., Greyhound Tower, Phoenix, AZ 85077. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 39414 (Sub-17TA), filed May 7, 1979. Applicant: TYLER TRUCK LINES, INC., 2824 Judge Road, Oakfield, NY 14125. Representative: S. Michael Richards, P.O. Box 225, 44 North Avenue, Webster, NY 14580. Contract carrier—irregular routes. *Adhesives, building materials, gypsum and gypsum products line, paint and paint products, fabricated metal products (except commodities in bulk),* from the facilities of the United States Gypsum Company at Genoa, Gypsum and Warren, OH; Detroit, MI; East Chicago and Shoals, IN; and Franklin Park, IL to all points in CT, DC, DE, ME, MI, MD, MA, NJ, NH, NY, OH, PA, RI, VT, VA and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: United States Gypsum Company, 101 South Wacker Drive, Chicago, IL 60606. Send protests to: Richard H. Cattadoris, DS, ICC, 910 Federal Bldg., 111 W. Huron Street, Buffalo, NY 14202.

MC 40494 (Sub-14TA), filed April 23, 1979. Applicant: HILBURN TRUCKING, INC., 19401 East 39th St., Independence, MO 64057. Representative: S. Harrison Kahn, Jeremy Kahn, Suite 733 Investment Building, Washington, D.C. 20005. *Such commodities as are dealt in by Agricultural Equipment Dealers,* from the facilities of Deere & Company located in Rock Island County, IL to points in TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Deere & Company, John Deere Road, Moline, IL 61265. Send protests to: V. V. Coble, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 44735 (Sub-41TA), filed April 12, 1979. Applicant: KISSICK TRUCK LINES, INC., 7101 East 12th Street, Kansas City, MO 64126. Representative:

John E. Jandera, 641 Harrison Street, Topeka, KS 66603. *Iron and steel articles,* from the facilities of Inland Steel Company at East Chicago, IN, to points in IL, IA, MO and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Inland Steel Company, 30 West Monroe Street, Chicago, IL 60603. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 52704 (Sub-221TA), filed May 8, 1979. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer "H", LaFayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. *Malt beverages and related advertising materials,* (except in bulk), from the facilities of Pabst Brewing Co. in Houston County, GA, to points in the United States in and east of WI, IL, MO, AR and TX (except the States of CT, ME, MA, NH, NY, PA, RI and VT), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pabst Brewing Co., P.O. Box 1013, Perry, GA 31069. Send protests to: Mabel E. Holston, T/A ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 53965 (Sub-153TA), filed May 9, 1979. Applicant: GRAVES TRUCK LINE, INC., P.O. Drawer 1387, Salina, KS 67401. Representative: Bruce A. Bullock, same address as applicant. *Meats, Meat Products, and Meat By-Products, and Articles Distributed by Meat Packinghouses,* as described in Sections A, C and D of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, except hides and commodities in bulk, between the facilities of Lauridsen Foods, Inc. at or near Britt, IA and the facilities of Armour & Company at or near Mason City, IA on the one hand, and on the other, points in CO, NE, MO, IL, OH, IN, KY, TN, AR, LA, TX, NM, AZ, OK and KS, restricted to traffic originating at or destined to the facilities of Armour & Co. at Mason City, IA or the facilities of Lauridsen Foods, Inc. at Britt, IA, for 180 days. Supporting shipper(s): Armour and Company, Greyhound Tower, Phoenix, AZ 85077. Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., 110 North Market St., Wichita, KS 67202.

MC 59655 (Sub-22TA), filed April 27, 1979. Applicant: SHEEHAN CARRIERS, INC., 62 Lime Kiln Road, Suffern, NY 10901. Representative; George A. Olsen, POB 357, Gladstone, NJ 07934. *Plastic bottles,* from Langhorne, PA, to points in the New York, NY Commercial Zone, and Cranston, RI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pepsi-Cola Company, Anderson Hill Road, Purchase, NY 10577. Send protests to: Maria B. Kejss, TA, ICC, 26 Federal Plaza, New York, N.Y. 10007.

MC 59655 (Sub-23TA), filed May 14, 1979. Applicant: SHEEHAN CARRIERS, INC., 62 Lime Kiln Road, Suffern, NY 10901. Representative: George A. Olsen, POB 357, Gladstone, NJ 07934. *Malt beverages and related advertising materials, and materials, equipment and supplies used in the manufacture and sale of malt beverages* between points in Onondaga and Oswego Counties, NY, on the one hand, and, on the other, points in the States of CT, ME, MA, NH, VT, VA, RI, OH, PA, MD, DE, NJ, and NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Miller Brewing Company, 3939 W. Highland Blvd., Milwaukee, WI 53208. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

MC 73165 (Sub-478TA), filed May 2, 1979. Applicant: EAGLE MOTOR LINES, INC., 830 North 33rd Street, Birmingham, AL 35202. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. *Plastic pipe, fittings and connections for plastic pipe, and materials and supplies used in the manufacture and distribution therefor,* except commodities in bulk, from the facilities of R. & G. Sloane Manufacturing Company at or near Valley View, OH, to points in MD, SC, WI, NJ, LA, MO, PA, MI and GA; and from Bakersfield, Santa Ana and Sun Valley, CA, to point in the U.S. (except AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): R. & G. Sloane Manufacturing Company, 7606 North Clybourn Avenue, Sun Valley, CA 91352. Send protests to: Mabel E. Holston, T/A, ICC , Room 1616—2121 Building, Birmingham, Al 35203.

MC 60014 (Sub-118 TA), filed May 2, 1979. Applicant: AERO TRUCKING, INC., Box 308, Monroeville, PA 15146. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. *Building materials (except in bulk) pipe* from the facilities of Johns Manville Products Corp. at or near Manville, NJ and Woodstock, VA to points in OH for 180 days. An ETA seeks 90 days operating authority. Supporting shipper(s): Johns Manville Products Corp., 200 N. Main Street, Manville, NJ 08835. Send protests to: J. J. England, DS, ICC 2111 Federal Bldg., Pittsburgh, PA 15222.

MC 94635 (Sub-9TA), filed April 27, 1979. Applicant: INTERSTATE SAND & GRAVEL TRANSPORTATION, INC., 717 Elmer Street, Vineland, N.J. 08360. Representative: Terrence D. Jones, 2033 K Street, NW., Washington, D.C. 20006. *Contract carrier:* irregular routes: sand, from the facilities of New Jersey Silica Sand Co. located near Millville, NJ to points in CT, DE, MD, MA, NY, OH, RI, VA and PA (except points in Bucks, Berks Lehigh, Lebanon, Lancaster, Chester, Delaware, Montgomery and Philadelphia Counties), for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): New Jersey Silica Sand Co., Box 636, Millville, N.J. 08332. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, N.J. 08608.

MC 101075 (Sub-125TA), filed May 7, 1979. Applicant: TRANSPORT, INC., P.O. Box 396, Moorhead, MN 56560. Representative: Ronald B. Pitsenbarger (same as applicant). *Anhydrous ammonia,* in bulk, from Pine Bend, MN to points in WI, and from Glenwood, MN to points in ND and SD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Farmers Union Central Exchange, Incorporated, a/k/a CENEX, P.O. Box 43089, St. Paul, MN 55164. Send protests to: DS, ICC, Room 268 Fed. Bldg., 657 2nd Avenue North, Fargo, ND 58102.

MC 107515 (Sub-1231TA), filed March 29, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., Post Office Box 308, Forest Park, GA 30050. Representative: Alan E. Serby & Richard M. Tettelbaum, Serby & Mitchell, P.C., Fifth Floor, Lenox Towers South, 3390 Peachtree Road, NE., Atlanta, GA 30326. *Meats, meat products and meat by-products (except commodities in bulk), as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, and (2) foodstuffs, except those described in (1) above, when moving in mixed loads with articles in (1) above, in mechanically refrigerated vehicles,* from Milan, IL to Goodlettsville, TN and points in FL, GA, NC and SC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Oscar Mayer & Co., Inc., P.O. Box 7188, Madison, WI 53707. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., NW., Rm. 300, Atlanta, GA 30309.

MC 108185 (Sub-52TA), filed April 30, 1979. Applicant: JACK COLE-DIXIE HIGHWAY COMPANY, 215 South 11th Street, Minneapolis, MN 55403.

Representative: Patrick B. Northup, 1100 Des Moines Building, Des Moines, IA 50209. *(1) Tractors (except tractors with vehicle beds, bed frames, or 5th wheels); (2) Agricultural machinery and implements; (3) Industrial and construction machinery and equipment; and (4) Parts, attachments and accessories for Parts (1) through (3) above* from Detroit, MI to points in AL, FL, GA, LA, MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Massey-Ferguson, Inc., 1901 Bell Avenue, Des Moines, IA 50321. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 111434 (Sub-99TA), filed May 8, 1979. Applicant: DON WARD, INC., 241 W. 56th Avenue, Denver, CO 80216. Representative: Don L. Ward (same address). *Aluminum Sulphate (Alum),* from Denver, CO to Amarillo, TX, for 180 days. An underlying ETA seeks authority for 90 days. Supporting shipper(s): Allied Chemical Corp., Industrial Chemicals Div., P.O. Box 1139R, Morristown, NJ 07960. Send protests to: District Supervisor R. L. Buchanan, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 112595 (Sub-88TA), filed May 2, 1979. Applicant: FORD BROTHERS, INC., P.O. Box 727, Ironton, OH 45638. Representative: Richard T. Trettin (same address as applicant). *Liquid chemicals, in bulk, in tank vehicles,* from the facilities of Dow Chemical U.S.A. at Hanging Rock, OH to points in the States of MN, IA, MO, WI, IL, IN, KY, TN, MI, VA, WV, DE, MD and points in NY west of a line starting at Point Breeze, NY and continuing along SR 98 southward to SR 39, west on SR 39 to SR 16, then south to SR 17, west to U.S. Hwy 219, to the PA border, and points in PA west of a line starting at the NY border along US Hwy 219 southward to the MD border, for 180 days. Supporting shipper(s): Dow Chemical U.S.A., Eastern Division, 14955 Sprague Road, Strongsville, OH 44136. Send protests to: J. A. Niggemyer, DS, 416 Old P.O. Bldg., Wheeling, WV 26003.

MC 114274 (Sub-61TA), filed May 2, 1979. Applicant: VITALIS TRUCK LINES, INC., P.O. Box 1703, Des Moines, IA 50306. Representative: William H. Towle, 180 N. LaSalle St., Chicago, IL 60601. *Fresh meats and packinghouse products* from the facilities of Wilson Foods Corporation at Des Moines, IA, to points in CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wilson Foods Corporation, 4545 Lincoln Blvd., Oklahoma City, OK 73105. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 114274 (Sub-62TA), filed May 11, 1979. Applicant: VITALIS TRUCK LINES, INC., 137 N.E. 48th St. Place, Des Moines, IA 50306. Representative: William H. Towle, 180 N. LaSalle St., Chicago, IL 60601. *Beverages* from Lenexa, KS to Omaha, NE and Cedar Rapids and Davenport, IA for 180 days. Supporting shipper(s): Mid-America Container Coporation, 10001 Industrial Blvd., Lenexa, KS 66215. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 115975 (Sub-36TA), filed March 30, 1979. Applicant: CBW TRANSPORT SERVICE, INC., P.O. Box 48, St. Louis, MO 63101. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. Contract Irregular: *Petroleum lubricating oils,* in bulk, in tank vehicles, form the facilities of Mobil Oil Corporation at St. Louis, MO to Hawkeye Coal Co. at Coal Run, KY under continuing bilateral contract with Mobil Oil Company, for 180 days. Supporting shipper(s): Mobil Oil Corporation, 8350 North Central Expressway, #522, Dallas, TX 75206. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, Rm. 414, Leland Office Bldg., 527 East Capitol Ave., Springfield, IL 62701.

MC 115975 (Sub-37TA), filed April 10, 1979. Applicant: C. B. W. TRANSPORT, P.O. Box 48, Wood River, IL 62095. Representative: Ernest A. Brooks, II, 1301 Ambassador Bldg., St. Louis, MO 63101. Contract Irregular: *Petroleum grease,* in bulk, in tank vehicles, from the facilities of Southwest Grease at Olathe, KS to U.S. Rubber Reclaiming Company at Vicksburg, MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mobil Oil Corporation, 8350 North Central Expressway, #522, Dallas, TX 75206. Send protests to: Charles D. Little, District Supervisor, Rm. 414, Leland Office Bldg., 527 East Capitol Ave., Springfield, IL 62701.

MC 116045 (Sub-51TA), filed April 27, 1979. Applicant: NEUMAN TRANSIT CO., INC., P.O. Box 38, Rawlins, WY 82301. Representative: Leslie R. Kehl of Jones, Meiklejohn, Kehl & Lyons, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. *Hydrogen peroxide,* in bulk, from Natrona County, WY to points in Wy. Restricted: The service authorized herein shall be limited to transportation of shipments having an immediate prior movement by rail. An underlying ETA seeks 90 days authority. For 180 days. Supporting shipper(s): F. M. C. Corp., 2000 Market St., Philadelphia, PA 19103. Send protests to: Paul A. Naughton, DS, ICC, Rm. 105 Federal Bldg. and Crt. House, 111 South Wolcott, Casper, Wy 82601.

MC 116254 (Sub-265TA), filed May 8, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: Mr. Hampton Mills (same address as applicant). *Aluminum, brass and copper articles,* from Rome, NY, to points in AL, AR, FL, GA, IA, IL, IN, KS, KY, LA, MI, MO, MN, MS, NC, OK, SC, TN, TX, and VA. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Revere Copper and Brass Inc., P.O. Box 191, Rome, NY 13440. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 117765 (Sub-261TA), filed May 1, 1979. Applicant: HAHN TRUCK LINE, INC., 1100 S. MacArthur, P.O. Box 75218, Oklahoma City, Oklahoma 73147. Representive: R. E. Hagan, 1100 S. MacArthur, P.O. Box 75218, Oklahoma City, Oklahoma 73147. *Non-Frozen Foodstuffs,* in containers from plant site of Vlasic Foods, Inc., Greenville, MS to KS, OK, & MO. for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Vlasic Foods, Inc., 33200 West 14 Mile Road, West Bloomfield, Mich. 46033. Send protests to: Connie Stanley, TA, ICC, Room 240, Old Post Office Bldg., 215 N.W. Third Street, Oklahoma City, Oklahoma 73102.

MC 117765 (Sub-262TA), filed April 27, 1979. Applicant: HAHN TRUCK LINE, INC., 1100 S. MacArthur, P.O. Box 75218, Oklahoma City, Oklahoma 73147. Representive: R. E. Hagan (same address as applicant). *Yarn,* from the facilities of Hollytex Carpet Mills, Milledgeville, GA, to the facilities of Hollytex Carpet Mills, Anadarko, OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hollytex Carpet Mills, P.O. Box 369, Anadarko, OK 73005. Send protests to: District Supervisor, ICC, Room 240, Old Post Office Bldg., 215 N.W. 3rd, Oklahoma City, Oklahoma 73102.

MC 119765 (Sub-81TA), filed April 2, 1979. Applicant: EIGHT WAY XPRESS, INC., 5402 So. 27th St., Omaha, NE 68107. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. *Meats and packinghouse products,* from Harlan, IA to Lodi, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Gary McFarland, Western Iowa Pork Co., East Highway 44, P.O. Box 510, Harlan, IA 51537. Send protests

to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 119765 (Sub-82TA), filed April 11, 1979. Applicant: EIGHT WAY XPRESS, INC., 5402 So. 27th St., Omaha, NE 68107. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. *Such commodities as are dealt in by grocery, hardware, and department stores (except foodstuffs),* from the facilities of Boyle-Midway, Division of American Home Products Corporation at Chicago, IL to points in AR, KS, IA, MN, MO, NE, and OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Boyle-Midway, Division of American Home Products Corporation, 5151 West 73rd Street, Chicago, IL 60638. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 121664 (Sub-73TA), filed May 4, 1979. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Avenue South, Birmingham, AL 35233. *Lumber,* from the International Boundary between the United States and Canada, in MI, to points in AR, AL, FL, GA, LA, MS, TN and TX; and from Camilla and Thomasville, GA and Abbeville and Mt. Vernon, AL, to points in OH, MI, PA, and IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Empire Wholesale Lumber Company, Miami and Gault Street, Akron, OH 44311. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616–2121 Building, Birmingham, AL 35203.

MC 123074 (Sub-15TA), filed April 27, 1979. Applicant: M. L. ASBURY, INC., 1100 South Oakwood, Detroit, MI 48217. Representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080. *Asphalt and asphalt products,* in bulk, in tank vehicles; from Detroit, MI to LaGrange and Steuben Counties, IN. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Marathon Oil Company, 539 South Main Street, Findlay, OH 45840. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 125985 (Sub-27TA), filed April 10, 1979. Applicant: AUTO DRIVEAWAY COMPANY, 310 South Michigan Avenue, Chicago, IL 60604. Representative: Daniel B. Johnson, 4304 East-West Highway, Washington, D.C. 20014. *Pickup trucks and panel trucks greater than ¾ ton in secondary movements in driveaway service,* between points in AZ, CA, CO, GA, IL, IN, MA, NJ, NY, OR, UT and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wacker Corporation, 3808 W. Elm St., Milwaukee, WI. Send protests to: Annie Booker, TA, ICC, 1386 Everett Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 128095 (Sub-29TA), filed April 23, 1979. Applicant: IBCO TRUCK LINE, INC., P.O. Box 1402, Tupelo, MS 38801. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. *New Office Furniture* from the facilities of Anderson Hickey Company located at or near Halls, TN and Henderson, TX to points in the United States in and east of the states of TX, OK, KS, NE, SD and ND, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Anderson Hickey Company, P.O. Box 80, Henderson, TX 75652. Send protests to: Floyd A. Johnson, DS, ICC, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 128095 (Sub-30TA), filed May 7, 1979. Applicant: IBCO TRUCK LINE, INC., P.O. Box 1402, Tupelo, MS 38801. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. (1) *Polyethylene foam* from Pontotoc, MS to points in AL, AR, CA, CO, FL, GA, IL, IN, IA, KS, KY, LA, MN, MO, NC, OH, OK, SC, TN, TX, WA and WI; and (2) *Gusset bags, padded bags, macerated pads, sleeve pads, and cellulose wadding* from Salem, IL; Granite Falls and High Point, NC to Pontotoc, MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jiffy Manufacturing Co., Inc., Box 469, Salem, IL 62881. Send protests to: Floyd A. Johnson, DS, ICC, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 128205 (Sub-75TA), filed April 23, 1979. Applicant: BULKMATIC TRANSPORT COMPANY, 12000 South Doty Avenue, Chicago, IL 60628. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. *Fertilizer, in bulk,* from Erie, Cordova, Chicago, Lemont, Belvidere and Seneca, IL to points in WI, MI, IN, IL and IA, for 180 days. Supporting shipper(s): International Minerals & Chemicals Corp., 421 E. Hawley St., Mundelein, IL 60060. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 128745 (Sub-3TA), filed April 27, 1979. Applicant: MIEDZINSKI'S TRANSFER, INC., P.O. Box 294, Leonardtown, MD 20650. Representative: Frank B. Hand, Jr., P.O. Drawer C, Berryville, VA 22611. *Contract Carrier,* irregular routes—*Telephone equipment, material and supplies,* between the site of the Western Electric Co. distribution center in Arlington County, VA, on the one hand, and, on the other, the sites of the Chesapeake and Potomac Telephone Company of Maryland supply and service centers located at Leonardtown (St. Marys County), Odenton (Anne Arundel Co.), and Waldorf (Charles Co.), MD, under contract with Western Electric Co., Cockeysville, MD, for 90 days. An underlying ETA seeking 90 days has been filed. Supporting shipper(s): K. N. Burleson, Western Electric Co., 225 Schilling Circle, Cockeysville, MD 21030. Send protests to: T. M. Esposito, TA, ICC, 600 Arch St., Room 63236, Philadelphia, PA 19106.

MC 129645 (Sub-73TA), filed May 4, 1979. Applicant: BASIL J. SMEESTER AND JOSEPH G. SMEESTER, d.b.a. SMEESTER BROTHERS TRUCKING, 1330 South Jackson Street, Iron Mountain, MI 49801. Representative: H. G. Denny, 1330 South Jackson Street, Iron Mountain, MI 49801. *Iron and steel and iron and steel articles,* from the facilities of Wheeling-Pittsburgh Steel Corporation at Allenport, PA to points in MI. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wheeling-Pittsburgh Steel Corporation, P.O. Box 118, Pittsburgh, PA 15230. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 129784 (Sub-8TA), filed May 3, 1979. Applicant: DAVISON TRANSPORT, INC., P.O. Drawer 846, Ruston, LA 71270. Representative: Tom E. Moore (same address as applicant). *Chemicals, in bulk, in tank and hopper-type vehicles,* between ERCO Industries, Inc. plant (located approximately five miles south of Monroe, LA on Highway 165 at or near the community known as Rilla, LA) on the one hand, and, on the other, points in AL, AR, FL, GA, KY, MS, MO, NC, OK, SC, TN, TX, and VA, for 180 days. Supporting shipper(s): ERCO Industries, Inc., P.O. Box 1612, Monroe, LA 71201. Send protests to: Robert J. Kirspel, DS, ICC, T–9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 129905 (Sub-5TA), filed May 1, 1979. Applicant: ALL STATES MOVING & STORAGE CO., INC., 2800 Navy Boulevard, Pensacola, FL 32505. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *New Furniture,* from Federal Correctional Institution near Tallahassee, FL, to points in the United States (except HI and AK) restricted to shipments destined to United States federally owned or maintained facilities,

for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Federal Prison Industries, Inc., Tallahassee, FL 32300. Send protests to: Mabel E. Holston, TA, ICC, Suite 1616, 2121 Building, Birmingham, AL 35203.

MC 133095 (Sub-254TA), filed April 23, 1979. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Marshall Kragen, 1835 K St., N.W., Suite 600, Washington, D.C. 20006. *Packaged petroleum products,* from Farmers Valley, New Kensington, and Emlenton, PA; and Congo and St. Marys, WV, to points in GA, AL, MS, AR, LA, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Quaker State Oil Refining Corp., P.O. Box 989, Oil City, PA 16301. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Fed. Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 133655 (Sub-152TA), filed April 30, 1979. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Such commodities* as are used in the construction and operation of nuclear power plants between the facilities of the Black Fox Nuclear Power Plant located in Rogers County, OK on and south of OK Hwy 33, on the one hand, and, on the other, points in and west of ND, SD, NE, KS, OK, and TX, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting Shipper(s): Public Service Company of Oklahoma, P.O. Box 201, Tulsa, OK 74102. Send protests to: Martha Powell, TA, 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133655 (Sub-153TA), filed April 27, 1979. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Such commodities as are dealt in by discount and variety stores* (except commodities in bulk), between Ridgefield, NJ on the one hand, and, on the other, points in LA; restricted to traffic originating at or destined to the facilities of S. H. Kress and Company, for 180 days. Supporting Shipper(s): S. H. Kress and Company, 114 Fifth Avenue, New York, NY 10011. Send protests to: District Supervisor Haskell E. Ballard, Box F–13206 Federal Building, Amarillo, TX 79101.

MC 133655 (Sub-154TA), filed May 11, 1979. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Trimmers and equipment, materials, and supplies* used in the manufacture, sale, and distribution of trimmers, between Houston, TX on the one hand, and on the other, points in CA, IL, MT, OH, OR, PA, and SD, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting Shipper(s): Weedeater, 10515 Harwin Drive, Houston, TX 77036. Send protests to: Martha Powell, Transportation Assistant, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133655 (Sub-155TA), filed May 11, 1979. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. (1) *Fiberglass rovings, woven rovings, chopped strand, mat, and reinforcements; and (2) equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) above between Wichita Falls, TX on the one hand, and, on the other, points in CA, FL, KS, NH, NY, OH, RI, and WA, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting Shipper(s): CertainTeed Corporation/Frd, 4515 Allendale Road, Wichita Falls, TX 76310. Send protests to: Martha Powell, Transportation Assistant, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133655 (Sub-156TA), filed May 11, 1979. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79105. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Meats, meat products, and meat by-products* from Amarillo, TX to points in CA, IL, IN, KS, and OH, for 180 days. Supporting shipper(s): Consolidated Pet Foods, Inc., P.O. Box 30488, Amarillo, TX 79120. Send protests to: Martha Powell, Transportation Assistant, Room 9A27, Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133775 (Sub-22TA), filed April 25, 1979. Applicant: REEFER TRANSIT LINE, INC., 1977 West 103rd Street, Chicago, IL 60643. Representative: Elaine M. Conway, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603. *Meats, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A, C and D of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk),* (1) from points in IL, IN, KS, MN, MO, NE, SD and WI to the facilities of Lauridsen Foods, Inc. at or near Britt, IA; (2) from the facilities of Lauridsen Foods, Inc. at or near Britt, IA and the facilities of Armour and Company at or near Mason City, IA to points in AL, AR, CO, CT, DE, FL, GA, IL, IN, KS, LA, MA, MD, ME, MI, MO, MN, MS, NE, NC, ND, NY, NJ, NH, OK, OH, PA, RI, SC, SD, TN, TX, VA, VT, WI and WV, for 180 days. Restricted to shipments originating at or destined to the above-named facilities. An underlying ETA seeks 90 days authority. Supporting shipper(s): Armour and Company, Greyhound Tower, Phoenix, AZ 85077. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 134235 (Sub-20TA), filed April 27, 1979. Applicant: KUHNLE BROTHERS, INC., P.O. Box 128, Chagrin Falls, OH 44022. Representative: Kenneth T. Johnson, Bankers Trust Bldg., Jamestown, NY 14701. *Salt,* from Baltimore, MD, to points in DE, MD, NJ, NY, PA, and VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Watkins, Salt Company, P.O. Box 150, Watkins Glen, NY 14891. Send protests to: Mary Wehner, D/S, ICC, 731 Federal Bldg., Cleveland, OH 44199.

MC 134835 (Sub-3TA), filed May 4, 1979. Applicant: WINSTON CARRIERS, INC., P.O. Box 347, Double Springs, AL 35553. Representative: Dwight L. Koerber, Jr., 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, DC 20001. Contract, irregular: *Trailers designed to be drawn by passenger automobiles, buildings and buildings in sections moving on wheeled undercarriages,* from Shelby, NC, to points in VA, SC, GA, TN, KY, MD, WV and DE, and rejected shipments on return, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Winston Homes of North Carolina, a Division of Winston Industries, P.O. Box 1330, Shelby, NC 28150. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 135895 (Sub-39TA), filed May 9, 1979. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Sta., Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. (1) *Paper and paper articles, and fiberboard, plastic and metal containers, and fittings and closures therefor, and* (2) *equipment, materials and supplies used in the manufacture and distribution of commodities described in* (1) *above* (except commodities in bulk and those requiring special equipment) between the

facilities of Container Corp. of America at or near Kenner, LA; Dallas, Fort Worth and Houston, TX, on the one hand, and, on the other, points in AL, AR, FL, GA, LA, MS, OK, TN and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Container Corp. of America, P.O. Box 1441, Ft. Worth, TX 76101. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 135895 (Sub-40TA), filed April 9, 1979. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Sta., Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. *Charcoal, charcoal briquetts, charcoal lighter fluid, hickory chips and related barbeque items, and wooden shipping pallets* (except commodities in bulk and those requiring special equipment) between the facilities of Husky Industries, Inc. at or near Meridian and Pachuta, MS and Branson, MO, on the one hand, and, on the other, points in AL, AR, FL, GA, LA, MS, MO, NC, OK, SC, TN and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Husky Industries, Inc., 62 Perimeter Center E., Atlanta, GA 30346. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 135924 (Sub-10TA), filed May 7, 1979. Applicant: SIMONS TRUCKING CO., INC., 3851 River Road, Grand Rapids, MN 55744. Representative: Samuel Rubenstein/David Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. *Steel pipe* from the facilities of Naylor Pipe Co. at Chicago, IL to Grand Rapids, Hoyt Lakes, Keewatin, Mt. Iron and Nashwauk, MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Naylor Pipe Company, 1230 East 92nd Street, Chicago, IL 60619. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 135924 (Sub-11TA), filed May 7, 1979. Applicant: SIMONS TRUCKING COMPANY, INC., 3851 River Road, Grand Rapids, MN 55744. Representative: Samuel Rubenstein/ David Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. *Steel pipe* from the facilities of Naylor Pipe Company at Chicago, IL to Hibbing, MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Naylor Pipe Company, 1230 East 92nd Street, Chicago, IL 60619. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 136315 (Sub-73TA), filed May 9, 1979. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 22–A, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. *Composition board and sheets* from the facilities of Champion International Corp. at or near Oxford, MS to points in IL, IN, IA, KY, MI, MN, MO, OH, PA and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Champion International Corp., Knightsbridge Dr., Hamilton, OH 45020. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 136605 (Sub-107TA), filed May 2, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (Same address as applicant). *Roofing materials* (1) from the facilities of Johns-Manville Sales Corporation located at or near Pittsburg, CA to points in OR, WA, ID, UT and MT; and (2) from the facilities of Johns-Manville Sales Corporation located in Los Angeles County, CA to points in OR, WA, ID and UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Johns-Manville Sales Corporation, 2600 Campus Dr., San Mateo, CA 94403. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 136605 (Sub-108TA), filed May 2, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (Same address as Applicant). *Poles and piling, treated and untreated,* from points in the states of MT, WY, ND and SD, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): North Pacific Lumber Co., P.O. Box 3915, Portland, OR 97208. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 136605 (Sub-109TA), filed May 9, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (Same address as Applicant). *Iron and steel articles* from the facilities of HyAlloy Steels Company located at or near Chicago, IL to points in the States of CA, AZ, UT and ID, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): HyAlloy Steels Company, 5100 West 73rd St., Chicago, IL 60638. Send protests to: Paul Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 136605 (Sub-106TA), filed April 26, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (Same address as Applicant). (1) *Lumber mill products, and wood products* from the facilities of Emmer Bros. Co., Inc., located at or near Laurel, MT to points in the states of IL, IN, KS, MI, MO, OH and OK; and (2) *Insulation board* from the facilities of Emmer Bros. Co., Inc., located at or near Laurel, MT to points in the states of CO, IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, OK, SD, WI and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Emmer Brothers Company, 6800 France Ave. So., Minneapolis, MN 55435. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 136605 (Sub-105TA), filed April 20, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (Same address as Applicant). *Scrap materials for recycle* from Deer Lodge County, MT to points in the states of WA, OR and CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Alaska Steel and Supply Company, E. 3410 DeSmet, Spokane, WA 99220. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 138115 (Sub-7TA), filed March 26, 1979. Applicant: FRANK D. CORBIN, 1308 Ambrose Drive, Winchester, VA 22601. Representative: Edward N. Button, 1329 Pennsylvania Avenue, Hagerstown, MD 21740. *Contract carrier:* irregular routes: *Acoustical tile panels, noise control products, accessories, materials, equipment and supplies used in the manufacture and distribution thereof,* between Hagerstown, MD and its commercial zone on the one hand, and, on the other points in NY, PA, WV, TN, GA, NC, SC, FL, MD, OH, DE, NJ, VA, CT, RI, MA, NH, VT, ME, IL and DC, for 180 days. Supporting Shipper(s): Acoustiflex Corporation, 811 Center Street, Plainfield, IL 60544. Send protests to: T. M. Esposito, TA, ICC, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 138635 (Sub-86TA), filed April 19, 1979. Applicant: CAROLINA WESTERN EXPRESS, INC., Box 3995, Gastonia, NC 28052. Representative: W. C. Sutton (Same as above). *Supplies and materials used in the manufacture and sale of venetian blinds (except in bulk)* from Montoursville, PA to Westminster, CA and Athens, Ga, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Liken Home Furnishings, 7130 Fenwick Lane, Westminster, CA 92683. Send protests to: Terrell Price, DS, ICC, 800 Briar

Creek Rd, Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 138635 (Sub-85TA), filed April 19, 1979. Applicant: CAROLINA WESTERN EXPRESS, INC., P.O. Box 3995, Gastonia, NC 28052. Representative: W. C. Sutton (Same as above). *Non-alcoholic cocktail mixes* from Byhalia, MS to points east of TX, KS, NE, SD and ND, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Professional Mixers, Inc., 300 Chesterfield Center, Suite 210, Chesterfield, MO 63017. Send protests to: Terrell Price, DS, ICC, 800 Briar Creek Rd, Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 138635 (Sub-83TA), filed April 19, 1979. Applicant: CAROLINA WESTERN EXPRESS, INC., Box 3995, Gastonia, NC 28052. Representive: W. C. Sutton (same as above). *Textiles and textile products, supplies and materials used in the manufacture, packaging and sale thereof* from Monroe, Balfour, Greensboro, Salisbury, NC and Clemson, SC to Los Angeles, CA and points in its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): PRF Corporation, P.O. Box 709, Monroe, NC 28110. Send protests to: Terrell Price, DS, ICC, 800 Briar Creek Rd, Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 138635 (Sub-84TA), filed April 19, 1979. Applicant: CAROLINA WESTERN EXPRESS, INC., Box 3995, Gastonia, NC 28052. Representive: W. C. Sutton, Box 3995, Gastonia, NC 28052. *Plastic pipe, tubing, fittings and connections (except in bulk)* from Sun Valley, Santa Ana, and Bakersfield, CA and Cleveland, OH to points in and east of MN, IA, MO, AR, and LA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): R & G Sloane Manufacturing Co., Inc., 7606 North Clybourn Ave., Sun Valley, CA 91352. Send protests to: Terrell Price, DS, ICC, 800 Briar Creek Rd, Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 138805 (Sub-8TA), filed April 11, 1979. Applicant: S&L Services, Inc., R.D. 1, Milton, PA 17847. Representive: Terrence D. Jones, 2033 K St., NW., Washington, D.C. 20006. *Foodstuffs, except in bulk,* from facilities of American Home Foods, a division of American Home Products Corp., at or near Milton, PA to pts. in DE, MA, MD, ME, NH, RI, VA, VT, WV and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Home Foods, Div. of American Home Products Corp., 685 Third Ave., New York, NY 10017. Send protests to: Peter R. Guman, D/S, 600 Arch St., Rm. 3238, Phila., PA 19106.

MC 138824 (Sub-23TA), filed May 10, 1979. Applicant: REDWAY CARRIERS, INC., 5910 49th St., Kenosha, WI 53140. Representive: Paul J. Maton, 10 S. LaSalle St., Suite 1620, Chicago, IL 60603. Contract carrier; irregular routes: *Food products, dry or liquid, in containers; materials and supplies incidental to and used in the processing, canning and bottling of said food products,* between the facilities of Oconomowoc Canning Corp. at Poinette, DeForest, Waunakee, Sun Prairie, Cobb, Merrill and Oconomowoc, WI, on the one hand, and on the other, points in AL, GA, IL, IN, KY, LA, MS, MD, OK, TN, IA, KS, MI, PA and AR, for 180 days. Supporting shipper(s): Oconomowoc Canning Co., 626 E. Wisconsin Ave., Oconomowoc, WI 53066. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 138875 (Sub-169TA), filed March 20, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representive: F. L. Sigloh (same address as applicant). *Bakery products,* (except in bulk), from McComb, OH to Buena Park, Union City, Richmond, Oakland, and San Francisco, CA and their respective commercial zones and Milwaukee, OR. Restricted to traffic originated at and destined to named origins and destinations, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper: Nabisco, Inc., Hanover, NJ 07936. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 138875 (Sub-170TA), filed March 26, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representive: F. L. Sigloh (same as above). *Lime,* except in bulk, from Dolomite, UT to Meridian, ID, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Wholesalers, Inc., 1300 E. Franklin Road, Meridian, ID 83642. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 138875 (Sub-173TA), filed April 19, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representive: F. L. Sigloh (same as above). *Feed, feed ingredients and supplements, except commodities in bulk,* from Denver and Pueblo, CO to points in ID, OR, and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): North Pacific Trading Co., 1505 S. E. Gideon, Portland, OR 97208. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 138875 (Sub-174TA), filed April 20, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representive: F. L. Sigloh (same as above). *Brick and masonry supplies,* from Denver and Boulder, CO to points in Ada and Canyon Counties, ID, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Wholesalers, Inc., 1300 E. Franklin Road, Meridian, ID 83642. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 138875 (Sub-176TA), filed April 20, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representive: F. L. Sigloh (same as above). *Such products as are dealt in by wholesale and retail drug discount stores, except drugs and medicines, and except commodities in bulk,* from the facilities of Formac-Valu-Rite, a subsidiary of Foremost-McKesson, Inc., located as Log Angeles, CA to the facilities of Formac-Valu-Rite at Portland, OR and its respective commercial zones, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Formac-Valu-Rite, a subsidiary of Foremost-McKesson, Inc., Crocker Plaza, One Post Street, San Francisco, CA 94104. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 138875 (Sub-177TA), filed April 20, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representive: F. L. Sigloh (same as above). *Metal tool boxes and tanks,* from Jonesboro, AR to Yuba City, Sacramento and Fresno, CA; Lamar, CO; Salt lake City, UT; Idaho Falls and Caldwell, ID; and Island City and Ontario, OR, for 180 days. An underlyng ETA seeks 90 day authority. Supporting shipper(s): D & B Supply Co., Inc., 3816 Cleveland Blvd., Caldwell, ID 83605. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 138875 (Sub-178TA), filed May 4, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representive: F. L. Sigloh (same as above). *Asphalt in rolls,* from Cody, WY to points in Elmore, Owyhee, Boise, Gem, Ada, Payette, Canyon and Washington Counties, ID and Malheur and Baker Counties, OR, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Western

Wholesale & Supply Corp. of Boise, 2717 Fletcher, Boise, ID. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 139555 (Sub-5TA), filed April 23, 1979. Applicant: MODULAR TRANSPORTATION CO., P.O. Box 1822, Grand Rapids, MI 49501. Representative: William D. Parsley, 1200 Bank of Lansing Building, Lansing, MI 48933. *Gypsum, gypsum products, plasterboard joint systems and building materials, and materials, equipment and supplies* used in the manufacture and distribution and installation of gypsum, gypsum products, plasterboard joint systems and building materials, except commodities in bulk in tank vehicles; (1) between the facilities of Grand Rapids Gypsum Co. at or near Grand Rapids, MI on the one hand and on the other, points in IN, IL, OH, KY and (2) between facilities of Grand Rapids System Company at or near Cleveland, OH, on the one hand, and on the other, points in IN, MI and IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Grand Rapids Gypsum Co., Inc. 201 Monroe Ave., Grand Rapids, MI 49502. Send Protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 139555 (Sub-6TA), filed May 4, 1979. Applicant: MODULAR TRANSPORTATION CO., P.O. Box 1822, Grand Rapids, MI 49501. Representative: William D. Parsley, 1200 Bank of Lansing Building, Lansing, MI 48933. *Gypsum and building materials, and materials, equipment, and supplies* used in or incidental to the manufacture, installation and distribution of gypsum and building materials; between the facilities of Georgia-Pacific Corporation-Gypsum Division at or near Chicago, IL and Franklin (Warren County), OH, on the one hand, and on the other, all points in IL (also points in IL) (interstate movement), IN, KY, MI, OH, (also points in Ohio interstate movements) and WI, for 180 days. Supporting shipper(s): Georgia-Pacific Corporation, 1062 Lancaster Avenue, Rosemont, Pa 19010. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, MI 48933.

MC 140294 (Sub-4TA), filed March 26, 1979. Applicant: GENERAL FREIGHTS, INC., P.O. Box 1946, Middleburg Pike, Hagerstown, MD 21740. Representative: Edward N. Button, 1329 Pennsylvania Ave., Hagerstown, MD 21740. *Toys, games and accessories for toys and games,* (1) between facilities of CBS Toys, division of CBS, Inc., at or near Harrisburg, Lancaster, Herndon, PA, on the one hand, and, on the other, Baltimore, MD, restricted to the transportation of traffic having a prior or subsequent movement by rail and (2) between the facilities of CBS Toys, at or near Harrisburg, Lancaster, Herndon, PA, on the one hand, and, on the other, facilities of CBS Toys, at or near Hagerstown, MD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): CBS Toys, Division of CBS, Inc., Longmeadow Rd., Hagerstown, MD 21740. Send protests to: T. M. Esposito, Trans. Asst., 101 S. 7th St., Room 620, Phila., PA 19106.

MC 140635 (Sub-16TA), filed April 23, 1979. Applicant: ADAMS LINES, INC., 2619 N Street, Omaha, NE 68107. Representative: Edward A. O'Donnell, 1004 29th St., Sioux City, IA 51104. *Meats, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the Report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk, in tank vehicles,* from the facilities of Palamera Beef Corp., at Omaha, NE to points in CT, DE, DC, FL, GA, IL, IN, IA, ME, MD, MA, MI, MN, NH, NJ, NY, OH, PA, RI, TN, VT, VA, WV, and WI, for 180 days. Restricted to traffic originating at named facility and destined to named states except traffic moving in foreign commerce. Supporting shipper(s): Palamera Beef Corp., 25th & Z Streets, Omaha, NE 68107. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 141804 (Sub-216TA), filed April 17, 1979. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). *Vehicle parts and accessories,* from Los Angeles County, CA to points in the U.S. in and east of MN, IA, MO, AR, and LA. Restricted to traffic originating at the facilities of Cyclone Automotive Products, Inc., for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Cyclone Automotive Products, Inc., 7040 Lankershim Blvd., North Hollywood, CA 91605. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 141804 (Sub-217TA), filed May 8, 1979. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman, P.O. Box 3488, Ontario, CA 91761. *Common:* Irregular: *Vehicle Motor Parts and Accessories,* between points in CA on the one hand, and on the other hand points in and east of TX, KS, OK, NE, SD, and ND. Restricted to traffic originating at or destined to the facilities of CALHAC, INC., for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Calhac, Inc., 12620 Hiddencreek Way, Cerritos, CA 90701. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 141804 (Sub-218TA), filed May 7, 1979. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman, P.O. Box 3488, Ontario, CA 91761. *Common:* Irregular: *Bathroom fixtures and hardware,* from Algoma, WI to points in CA, OR, and WA, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Olsonite Corp., 3041 Via Mondo St., Compton, CA 90221. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 142364 (Sub-8TA), filed May 4, 1979. Applicant: KENNETH SAGELY, d.b.a. SAGELY PRODUCE, 2802 Kibler Road, Van Buren, AR 72956. Representative: Don Garrison, P.O. Box 159, Rogers, AR 72756. *Ground clay* from the facilities of Lowe's Inc., at or near Bloomfield, MO and Olmsted, Il to points in AR, KS, OK and TX, for 180 days as a common carrier over irregular routes. An underlying ETA seeks 90 days authority. Supporting shipper(s): Lowe's Inc., 348 South Columbia Street, South Bend, IN 46601. Send protests to: William H. Land, Jr., DS, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 142715 (Sub-47TA), filed May 8, 1979. Applicant: LENERTZ, INC., P.O. Box 141, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). *Such commodities as are dealt in by wholesale or retail food business houses and drugstore outlets (except commodities in bulk)* from the facilities utilized by Procter & Gamble Co. at or near Cincinnati, OH to points in CT, DC, MD, MA, NJ, NY, PA and RI, restricted to traffic originating at the facilities utilized by the Procter & Gamble Co. at or near Cincinnati, OH and destined to points in the named states, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Procter & Gamble Distributing Company, P.O. Box 599, Cincinnati, OH 45201.

Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 142715 (Sub-48TA), filed April 5, 1979. Applicant: LENERTZ, INC., P.O. Box 141, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). *Foodstuffs (except commodities in bulk),* from (1) Beloit, WI to points in MD, MA, NJ, NY, OH, PA and DC; and (2) Owatonna, MN to Foxboro, MA and Teterboro, NJ, restricted to traffic originating at the facilities of Geo. A. Hormel and Co. at named origin and destined to the named points and states, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Geo. A. Hormel & Company, Supervisor—Motor Carrier Services, P.O. Box 800, Austin, MN 55912. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 142715 (Sub-49TA), filed April 9, 1979. Applicant: LENERTZ, INC., P.O. Box 141, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). *Bakery products (except commodities in bulk)* from Chicago, IL to points in ND, SD, NE, MN, IA, WI, IN, MI, OH, PA and NY, restricted to traffic originating at the facilities of Salerno-Megowen Biscuit Co., Niles, IL and destined to points in the named states, for 180 days. Supporting shipper(s): Salerno-Megoen Biscuit Co., Traffic Manager, 7777 North Caldwell, Chicago, IL 60648. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 142715 (Sub-50TA), filed April 18, 1979. Applicant: LENERTZ, INC., P.O. Box 141, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). *Foodstuffs (except commodities in bulk)* from the facilities of American Home Foods, Milton, PA to LaPorte, IN and Chicago, IL and points in its commercial zone, restricted to traffic originating at the facilities of American Home Foods, Milton, PA and destined to the named points, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Home Foods Division of American Home Products Corporation, 685 Third Avenue, New York, NY 10017. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 143165 (Sub-4TA), filed April 20, 1979. Applicant: CHARLES W. MC CLELLAND, d.b.a. MC CLELLAND LUMBER TRANSPORTS, P.O. Box 73, Cuba, MO 65453. Representative: Charles W. McClelland (address: same as above). *Contract carrier,* irregular routes *Steel tubing and pipe, and materials, equipment and supplies* used or useful in the manufacture and distribution of such commodities (except commodities in bulk and those because of size or weight require the use of special equipment) between the facilities of Maverick Tube Corp. at or near Union, MO on the one hand, and, on the other, AR, IL, IN, IA, KY, KS, LA, MI, MS, NE, NC, OH, PA, TN, TX, OK and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Maverick Tube Corp., P.O. Box 696, Union, MO 63084. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 143605 (Sub-5TA), filed May 8, 1979. Applicant: B & M EXPRESS, INC., 500 South Western, Oklahoma City, OK 73106. Representative: C. L. Phillips, Room 248—Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106. *Contract carrier:* Irregular routes: (1) *Pulpboard cartons and/or boxes* in LTL and truckload shipments; and (2) *Materials, equipment and supplies* used in the manufacture and distribution of the commodities described in Par. (1) above, (except commodities in bulk and commodities which because of size or weight require the use of special equipment), between Conway and Harrison, AR and Greenville, TX, on the one hand, and, on the other, points in AL, CO, IA, IL, KY, LA, MS, MO, NM, & TN, for 180 days. Note: The service authorized herein is restricted to a transportation service to be performed under a continuing contract(s) with Rock-Tenn Company of Norcross, GA. Supporting shipper(s): Rock-Tenn Company, P.O. Box 547, Conway, AR 72032. Send protests to: D/S, ICC, Room 240 Old Post Office, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 143775 (Sub-89TA), filed April 13, 1979. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke (address same as applicant) (1) Paint, varnish, thinners, solvents and shellacs and (2) materials and supplies used in the application, sale and distribution of (1) above, (1) from Vernon, CA and Baltimore, MD to points in the United States (except AK, HI, Plymouth, MN, Berkeley and Kansas City, MO, Cheektowaga, NY, Middleburgh Hts., OH, and Dallas, TX) and (2) from Compton, CA, Chicago, IL, Atlanta, GA and Linden, NJ and their respective commercial zones to points in the United States (except AK and HI), restricted to traffic originating at the facilities of Dutch Boy, Inc. and against shipments in bulk, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Dutch Boy, Inc., 500 Central Ave., Northfield, IL 60093. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 143775 (Sub-90TA), filed April 2, 1979. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke (same address as applicant). *General Commodities (except classes A & B explosives, household goods, commodities in bulk and those requiring the use of special equipment),* (1) from Philadelphia, PA to CA, IL and TX and (2) from Chicago, IL to Philadelphia, PA, restricted to traffic moving for the account of Cooperative Shippers Association, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Cooperative Shipper Association, 4252 Rising Sun Ave., Philadelphia, PA 19140. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoeniz, AZ 85025.

MC 143775 (Sub-91TA), filed April 2, 1979. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke (same address as applicant). *Pesticides, including insecticides, fungicides and weed killing compounds (except in bulk),* from Kansas City, MO and its commercial zone, to points in AZ, CA, CO, ID, MT, NM, OR, NV, UT, WA and WY in temperature controlled equipment, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mobay Chemical Corporation, P.O. Box 4913, Hawthorne Rd., Kansas City, MO. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 143775 (Sub-92TA), filed April 16, 1979. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke, address same as Applicant. *General commodities, restricted to traffic moving for the account of Northeastern PA Shippers Cooperative Association, Inc.,* from points in Broome and Chemung Counties, NY and Lackawanna, Lehigh Luzerne, Northampton and Wayne Counties, PA to points in IL, MO, TX, CA, WA, OR, CO, MN, WI, GA, FL, MI and NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s):

Northeastern PA Shippers Cooperative Association, Inc., Suite 300, PA Park Bldg., Pittston, PA 18640. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 144275 (Sub-2TA), filed May 7, 1979. Applicant: JK EXPRESS, INC., P.O. Box 2508, Trenton, N.J. 08690. Representative: Mel P. Booker, Jr., Esq., 110 South Columbus Street, Alexandria, Virginia 22314. *Contract carrier:* irregular routes: *Sealers,* moving in shipper-owned trailers, from the facilities of Cosmicoat, Inc. located at or near Ewing Township, NJ to Marysville, PA; Fredericksburg, VA; Beltsville, MD; Statesville, NC; and points in their respective commercial zones. Restricted to traffic moving under a continuing contract(s) with Cosmicoat, Inc. of Wooster, OH, for 180 days. An underlying ETA seeks 90 day authority. Supporting Shipper(s): Cosmicoat, Inc., 100 Lexington Avenue, Trenton, N.J. 08618. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, N.J. 08608.

MC 144604 (Sub-1TA), filed April 18, 1979. Applicant: J & R AUTO TRANSPORT, INC., P.O. Box 27, Summersville, MO 65571. Representative: Tom B. Kretsinger & Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. *Boats,* from Springfield, MO to points and places in the United States, for 180 days. Supporting Shipper(s): J. L. M. Industries, Inc., 2655 W. College Rd., Springfield, MO 65802. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 144605 (Sub-6TA), filed May 7, 1979. Applicant: HOPPY LINES, INC., 420 Devonshire Drive, Brea, CA 92521. Representative: Miles L. Kavaller, Mandel & Kavaller, 315 South Beverly Drive, Suite 315, Beverly Hills, CA 90212. *Fire extinguishers and materials and supplies used in the manufacture of* fire extinguisher, except in bulk, originating at the facilities of Amerex Corporation at Trussville, AL, to Los Angeles County, CA and Seattle, WA and from Riverside and Los Angeles Counties CA to the facilities of Amerex Corporation, located in Trussville, AL., for 180 days. Supporting Shipper(s): Amerex Corporation, P.O. Box 81, Trussville, AL 35173. Send protests to: Irene Carlos, P.O. Box 1551, Los Angeles, California 90053.

MC 144605 (Sub-7TA), filed April 27, 1979. Applicant: HOPPY LINES, INC., 420 Devonshire Drive, Brea, CA 92521. Representative: Miles L., Kavaller, Mandel & Kavaller, Attorney-at-Law, 315 South Beverly Drive, Suite 315, Beverly Hills, CA 90212. *Common:* Irregular: *Electric motors and parts,* from the facilities of Westinghouse Electric Corporation located at or near Lima, Bellfontaine, Upper Sandusky, and West Carrollton, OH and Union City, Indiana to points in AZ and CA, for 180 days. Supporting Shipper(s): Westinghouse Electric Corporation, 290 Ledger Road, No. Huntington, PA 15642. Send protests to: Irene Carlos, TA, ICC, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012.

MC 145195 (Sub-3TA), filed May 8, 1979. Applicant: DEEJAY TRANSPORTATION, INC., P.O. Box 651, Horace, ND 58047. Representative: Charles E. Johnson, P.O. Box 1982, Bismarck, ND 58501. *Non-alcoholic beverages,* from Minneapolis, MN and its commercial zone to points in ND (except Grand Forks and Fargo), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Shasta, 3530 East 28th Street, Minneapolis, MN 55406. Gold Medal Beverage Company, A Division of Beatrice Foods, 553 N. Fairview Avenue, St. Paul, MN 55104. Send protests to: DS, ICC, Bureau of Operations, Room 268 Federal Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 145025 (Sub-4TA), filed April 23, 1979. Applicant: CONSIGNOR'S INC., P.O. Box 42, Centerville, OH 45459. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *Contract carrier:* irregular routes: *Truck, trailer, mobile home and recreational vehicle parts and accessories, and materials, equipment and supplies used in the manufacture and distribution thereof (except commodities in bulk and commodities which, because of size or weight, require the use of special equipment),* between the facilities of Dayton Walther Corporation and its Divisions located at Cincinnati, Dayton, Fayette, Moraine and Portsmouth, OH; Carrollton and Franklin, KY; Muncie and Richmond, IN; Americus, GA; Union City, TN; and Commerce, TX, including points in their respective commercial zones, on the one hand, and, on the other, points in the states of GA, IN, IL, KY, LA, MD, MI, NY, OH, PA, TN, and TX, for 180 days. Restricted to service performed under contract or continuing contracts with Dayton Walther Corporation of Dayton, OH. An underlying ETA seeks 90 days authority. Supporting shipper: Dayton Walther Corporation, Myna Burba, Shipping & Receiving Supervisor, 2800 East River Rd., Dayton, OH 45401. Send protests to: Bureau of Operations, ICC, 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 145294 (Sub-2TA), filed April 27, 1979. Applicant: JAMES T. BARTLETT AND CHARLES C. BROWN, A PARTNERSHIP, d/b/a CHASE AND THOMAS TRUCKING CO., Rt. 50, P.O. Drawer 610, Bridgeport, WV 26330. Representative: John M. Friedman, 2930 Putnam ave., Hurricane, WV 25526. *Silica sand,* in bulk, in dump vehicles, from points in Frederick County, VA, to points in MD, PA, WV and Kingsport and Nashville, TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Unimim Corporation, No. 4 Greenwich Office Park, Greenwich, CT 06830. Send protests to: J. A. Niggemyer, DS, 416 Old P.O. Building, Wheeling, WV 26003.

MC 145435 (Sub-4TA), filed April 19, 1979. Applicant: WESTERN AG INDUSTRIES, INC., 2750 North Parkway, Fresno, CA 93771. Representative: Roland J. Mefford, 2750 North Parkway, Fresno, CA 93771. Contract carrier; irregular routes. *Carpet, carpet padding, and congoleum resilient,* from points in GA and NJ on one hand, and points in AZ, CA, OR, and NV, on the other hand, for 180 days. Supporting shipper: La Salle Deitch Co., 1231 Warner Ave., Tustin, CA 92680. Send protests to: District Supervisor, 211 Main, Suite 500, San Francisco, CA 94105.

MC 145475 (Sub-1TA), filed April 4, 1979. Applicant: FRONTIER LEASING, INC., Route 7, Box 173, Joplin, Missouri 64801. Representative: Turner White or Bruce McCurry, 910 Plaza Towers, Springfield, Missouri 65804. Aluminum; aluminum ingots and sows; aluminum billets and dross; scrap metals; iron sand, shot; ferro alloys; foundry facings; fire brick or high temp bonding mortar; power house slag; and coke, between points in AL, AR, IL, IN, KS, MI, MO, OH, WV, and WI on the one hand and points in AL, AR, IL, IN, IA, KS, LA, MI, MO, NE, OH, TN, TX, WV and WI on the other, for 180 days. An underlying ETA seeks 90 days authority. Restriction: Restricted to shipments under continuing contract or contracts with Tower Metals and Ore Products, Division of Tang Industries of Ft. Scott, KS; Wade's Aluminum Products, Inc. of Ft. Scott, KS; Central Non Ferrous, Inc. of Joplin, MO; Wells Aluminum, Inc. of Monett, MO; and Midvale Mining and Manufacturing Company of Tulsa, OK. Supporting Shipper(s): (1) Tower Meta'ls and Ore, Division of Tang Industries, 301 N. Hill, Ft. Scott, KS. (2) Midvale Mining & Mfg. Co., 11384 E. Tecumseh Street, Tulsa, OK 74116. (3) Wells

Aluminum, Inc., 808 County Road, Monett, MO 65708. (4) Wade's Alu. Products, Inc., Route 2, P.O. Box 762, Fort Scott, KS. (5) Central NonFerrous, Twelfth and Iowa, Joplin, MO 64801. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, Missouri 64106.

MC 145595 (Sub-5TA) filed April 2, 1979. Applicant: WARREN G. GORMLEY, d.b.a. GROMLEY TRUCKING, 1607 W. Swan, Springfield, Missouri 65807. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, Iowa 50309. *Charcoal, charcoal briquets, fireplace logs, wood chips, lighter fluid and all related products* (except liquid commodities in bulk), from Meta, MO to points in AZ, CA, CO, FL, GA, KS, MS, NM, OK, OH, SD, TX, UT, WA and NE for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Standard Milling Company, P.O. Box 410, Kansas City, MO 64141. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 145655 (Sub-4TA), filed May 1, 1979. Applicant: TYSON FOODS, INC., 2210 Oaklawn, P.O. Drawer E, Springdale, AR 72764. Representative: Michael H. Mashburn, 111 Holcomb, P.O. Box 869, Springdale, AR 72764. *General commodities,* except these of unusual value, dangerous explosives, household goods as defined in the Practices of Motor Carriers of Household Goods 17 MCC 467, commodities in bulk, commodities requiring special equipment and those injurious to or contaminating to other lading, from points in MO, RI, IN, LA, CT and NH to Bentonville, Searcy and Fort Smith, AR, for 180 days as a contract carrier over irregular routes. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Wal-Mart Stores, Inc., P.O. Box 116, Bentonville, AR 72712. Send protests to: William H. Land, Jr., DS, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 145665 (Sub-2TA), filed March 12, 1979. Applicant: MAC EWAN MOTOR LINES, Inc., P. O. B. 658, West Chester, PA 19380. Representative: Dean N. Wolfe, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. Contract, irregular routes, *Such commodities as are dealt in by wholesale, retail, and chain grocery and food business houses* (except commodities in bulk and frozen commodities), from the facilities of the Clorox Co. at Chicago, IL to the facilities of the Clorox Co. at Jersey City, NJ, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): The Clorox Co., 125 Statue of Liberty Dr., Jersey City, NJ 07035. Send protests to: T. M. Esposito, Trans. Asst., 600 Arch St., Room 3238, Phila., PA 19106.

MC 145755 (Sub-2TA), filed March 26, 1979. Applicant: D & L CARTAGE, INC., P.O. Box 170, 1865 Bernice Road, Lansing, IL 60438. Representative: James Robert Evans, 145 West Wisconsin Avenue, Neenah, WI 54956. *Iron and steel articles,* from the facilities of Jones & Laughlin Steel Corporation at Chicago, IL and its commercial zone, to Davenport, IA and its commercial zone, and to points on and North of US Hwy 36 from IN state line to Decatur, IL and then route US Hwy 48 to US Hwy 29 to US Hwy 36 to IA state line, for 180 days. An underlying ETA was granted for 90 days authority. Supporting Shipper(s): Jones & Laughlin Steel Corporation, 3001 Dickey Road, East Chicago, IN 46312. Send protests to: Annie Booker, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 145765 (Sub-1TA), filed April 3, 1979. Applicant: WIEST TRUCKLINE, INC., 1305 6th Avenue SW., Jamestown, ND 58401. Representative: Charles E. Johnson, 418 East Rosser Avenue, P.O. Box 1982, Bismarck, ND 58501. *Iron and steel articles,* from the facilities of United States Steel Corporation at or near Gary, IN, South Chicago, Joliet and Waukegan, IL to points in MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): United States Steel Corporation, 1000 East 80th Place, Merrillville, IN 46410. Send protests to: DS, ICC, Bureau of Operations, Room 268 Fed. Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 145965 (Sub-2TA), filed May 2, 1979. Applicant: TOMORROW TRANSPORTS, INC., 1257 Central Ave., Hamilton, OH 45011. Representative: Jerry B. Sellman, Muldoon, Pemberton and Ferris, 50 W. Broad St., Columbus, OH 43215. *Plastic film or sheeting,* (1) from Augusta, KY, to Los Angeles, CA; Greenwood, SC; Dallas, El Paso, Houston, San Antonio and Waco, TX; and Douglas, AZ; (2) from Fresno, CA, to El Paso, TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Clopay Corporation, Plastic Products Division, William R. Sonnycalf, Distribution Manager, 801B West 8th St., Cincinnati, OH 45203. Send protests to: Bureau of Operations, ICC, Wm. J. Green, Jr., Federal Bldg., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 146095 (Sub-3TA), filed April 19, 1979. Applicant: McGEE–BALLENGER TRUCKING CO., INC., P.O. Box 851, Mauldin, SC 29662. Representative: Edwin M. Synder, Sullivan and Leavitt, P.C., P.O. Box 400, Northville, MI 48167. *Contract carrier;* irregular routes: *Carpets, carpeting, carpet remnants, or rugs, and soft surface fabrics,* from the facilities of Dan River Mills, Inc., located at or near Greenville, SC, to points in TX, AZ, CA, WA, NV, UT, CO, and OR, for the account of Dan River Mills, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Dan River Mills, Inc., P.O. Box 167, Greenville, SC 29602. Send protests to: E. E. Strotheid, D/S, ICC, Rm. 302, 1400 Bldg., 1400 Pickens Street, Columbia, SC 29201.

MC 146135 (Sub-1TA), filed April 19, 1979. Applicant: HRIBAR BROS., INC., 1571 Waukesha Road, Caledonia, WI 53108. Representative: Lee R. Hribar (same address as applicant). *Sand, gravel, stone, crushed stone, limestone, agricultural lime, slag, and dirt,* between Milwaukee, Waukesha, Racine, and Kenosha Counties, WI on the one hand, and, on other Lake, McHenry and Cook Counties, IL and Lake County, IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Vulcan Materials Corporation, 1501 3-Mile Rd., Racine, WI. Send protests to: G. Daugherty, TA, ICC, Federal Bldg., 517 E. Wisconsin Ave. Rm. 619, Milwaukee, WI 53202.

MC 146235 (Sub-1TA), filed February 5, 1979. Applicant: J. H. SIMS TRUCKING COMPANY, INC., 505 South Palmetto Avenue, Ontario, California 91761. Representative: Richard C. Celio, 1415 West Garvey Avenue, West Covina, CA 91790. *Citrus products,* between Ontario and Corona, CA, on the one hand, and, on the other, Long Beach and Los Angeles, CA Harbors, having a prior or subsequent movement by water, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Sunkist Growers, 616 East Sunkist Street, Ontario, CA 91761. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012.

MC 146435 (Sub-1TA), filed April 5, 1979. Applicant: SMITH TRUCK BROKERAGE, INC., P.O. Box 974, Willmar, MN 56201. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. *Candy, confectionery and dessert preparations* from Chicago, IL to Minneapols, MN,

Billings, MT, Spokane and Seattle, WA, Portland, OR, and Salt Lake City, UT, and their respective commercial zones, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Leaf Confectionery, Inc., Distribution Manager, 1155 North Cicero Avenue, Chicago, IL 60651. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 146565 (Sub-1TA), filed May 8, 1979. Applicant: WESTERN SALES TRANSPORTATION, INC., 1810 N. 11th St., Omaha, NE 68110. Representative: James F. Crosby, P.O. Box 37205, Omaha, NE 68137. *Aluminum foil food containers,* from the facilities of Wilkinson Manufacturing Co., at Ft. Calhoun, NE to Deerfield, IL; LaPorte and Lafayette, IN; and Chicago, IL and points in its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wilkinson Manufacturing Co., Ft. Calhoun, NE 68023. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146585 (Sub-1TA), filed April 17, 1979. Applicant: DOUBLE DD TRUCK LINE, INC., 8860 S. Lone Elder Road, Canby, OR 97013. Representative: Jerry R. Woods, Suite 1440—200 Market Building, Portland, OR 97201. *Lumber and lumber mill products* from points in Baker, Crook, Deschutes, Harney, Jefferson, Klamath, Lake, Union, and Wasco Counties, OR to points in Adams, Arapahoe, Denver and Jefferson Counties, CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Deschutes Pine Sales, Inc., P.O. Box 1243, Bend, OR 97701. Send protests to: A. E. Odoms, District Supervisor, ICC, 114 Pioneer Courthouse, 555 S W. Yamhill Street, Portland, OR 97204.

MC 146575 (Sub-1TA), filed March 12, 1979. Applicant: GARY PARISH, d.b.a., G & C FREIGHT SERVICE, 647 SW 143rd, Seattle, WA 98166. Representative: Gary Parish, 647 SW 143rd, Seattle, WA 98166. *Contract carrier:* irregular routes: *Material equipment and supplies used in the manufacturing, distribution, installation and maintenance of framing and structural roof systems,* between points in WA, OR, CA, ID, MT, NV and UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Victor Construction, Inc., 13319 S. E. 160th Place, Renton, WA 98055. Send protests to: Shirley M. Holmes, T/A ICC, 858 Federal Bldg., 915 Second Avenue, Seattle, WA 98174.

MC 146645 (Sub-1TA), filed April 10, 1979. Applicant: ELWYN NICE TRUCKING, INC., Route 1, Morrison, IL 61270. Representative: Albert A. Andrin, 180 North LaSalle St., Chicago, IL 60601. *Anhydrous ammonia,* in bulk, in tank vehicles, from points in IA to Whiteside County, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Farmers Elevator & Supply Co., E. Market St., Morrison, IL. Send protests to: Annie Booker, TA, ICC, 1386 Everett Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 146685 (Sub-1TA), filed April 3, 1979. Applicant: TRANSPORT ROBERT RICHER INC., P.O. Box 351, Valleyfield, PQ, Canada. Representative: J.A.R. Bouffard, 30 Lakeshore Road, Suite 1012, Pointe-Claire, PQ, Canada H9S 4H2. *Automobiles, trucks and busses and parts and accessories therefor, in specially designed car carrier equipment,* between the ports of entry on the International Boundary Line between the United States and Canada, on the one hand, and, on the other, points in MA, NY and VT. Restricted to traffic having a prior or subsequent movement in the Province of Quebec, for 180 days. An underlying ETA seeks 90 days. Supporting shipper(s): Orly Automobiles Inc., Lachine, PQ, Canada; Norbert Automobile Ltee, Lachine, PQ, Canada; Lallier Automobile Inc., Montreal, PQ, Canada. Send protests to: ICC, P.O. Box 548, Montpelier, VT 05602.

MC 146805 (Sub-2TA), filed April 16, 1979. Applicant: J. R. PORTER, INC., Rt. 5, Box 589, South Point, OH 45680. Representative: R. William Berry, 406 2nd Ave., Chesapeake, OH 45619. *Contract carrier*—irregular routes: *Cement, hydraulic, masonry, natural or portland, in bags,* from Huntington, WV to all points in OH and KY, under a contract with Louisville Cement Company, Louisville, KY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Louisville Cement Company, P.O. Box 35750, Louisville, KY 40232. Send protests to: J. A. Niggemyer, DS, 416 Old P.O. Bldg., Wheeling, WV 26003.

MC 146814 (Sub-1TA), filed May 7, 1979. Applicant: VAN WYK, INC., C Street, Box 433, Sheldon, IA 51201. Representative: Edward A. O'Donnell, 1004 29th St., Sioux City, IA 51104. *Meat, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A & C of Appendix I to the Report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, except hides and commodities in bulk, in tank vehicles,* from the facilities of Spencer Foods, Inc., at Fort Dodge and Spencer, IA to points in IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Spencer Foods, Inc., P.O. Box 544, Schuyler, NE 68661. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146864 (Sub-1TA), filed April 24, 1979. Applicant: DON BRISSON, P.O. Box 23142, Tigard, OR 97223. Representative: Philip G. Skofstad, 1300 N.E. Linden, Gresham, OR 97030. (1) Green veneer from Brookings and Roseburg, OR to Arcata, CA. (2) Dry veneer from Arcata, CA to Roseburg, Grants Pass, Brookings, and Gold Beach, OR. (3) Plywood from Arcata, CA to Reno, NV, Denver, CO, and Albuquerque, NM. And, from Brookings and Gold Beach, OR to Arcata, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Four Point Recovery Corporation, 10100 SW Walnut, Tigard, OR 97223. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 147014 (Sub-1TA), filed May 8, 1979. Applicant: TOM DONAHUE TRUCKING, INC., 2463 W. St. Paul Ave., Milwaukee, WI 53233. Representative: Roger S. Bessey, 740 N. Plankinton Ave., Milwaukee, WI 53203. *General commodities* (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), restricted to shipments transported for Westransco, Inc. (FF-52), from Milwaukee, WI and its Commercial Zone to Chicago, IL and its Commercial Zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Westransco, Inc., 3633 W. 38th St., Chicago, IL 60632. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Room 619, Milwaukee, WI 53202.

MC 147044 (Sub-1TA), filed May 4, 1979. Applicant: SOUTHWEST TRAILS, INC., 18925 Anelo Street, Carson, CA 90725. Representative: R. Y. Schureman, Attorney-at-Law, 1545 Wilshire Blvd., Los Angeles, CA 90017. *Blended gasoline, distillate fuel oil and jet fuels, from points in Los Angeles and Kern Counties, California, to points in Arizona, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Gustafson Oil Company of California, 1888 Century Park East, Century City, CA 90067. Send protests to: Irene Carlos, P.O. Box 1551, Los Angeles, CA 90053.*

MC 147144 (Sub-1TA), filed May 8, 1979. Applicant: INTERNATIONAL

CARRIERS, INC., 4300 NW. 37th Ave., Miami, FL 33142. Representative: Ronald N. Cobert, Suite 501, 1730 M St. NW., Washington, D.C. 20036. *General commodities* (except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) from the facilities utilized by Piggy Back Shippers Association of Florida, Inc., at or near Jersey City, NJ, Chicago, IL, and Boston, MA to the facilities utilized by Piggy Back Shippers Association of Florida, Inc. at or near Jacksonville, Orlando, Miami and Tampa, FL, restricted to movements on the bills of lading of shippers' associations for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Piggy Back Shippers Assn. of FL, Inc., 1240 S.E. 10th Ct., P.O. Box 1390, Hialeah, FL 33010. Send protests to: Donna M. Jones, T/A, ICC, Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.

MC 147184 (Sub-1TA), filed May 7, 1979. Applicant: GOLD CHIP, INC., 14 James Thomas Rd., Malvern, PA 19355. Representative: James Law (same address as applicant:). *Passengers and their baggage, limited to the transportation of not more than 11 passengers in any one vehicle, not including the driver thereof, and not including children under 10 years of age who do not occupy a separate seat of seats,* between Montgomery County, Chester County, Bucks County, PA on the one hand, and on the other, Atlantic County, NJ for 180 days. Supporting shipper(s): There are 5 statements in support attached to this application which may be examined at the I.C.C. in Washington, D.C. or copies of which may be examined in the field office named below. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 115322 (Sub-176TA), filed March 26, 1979, and published in **Federal Register** issue of May 15, 1979, and republished as corrected this issue. Applicant: REDWING REFRIGERATED, INC., 8515 Palm River Road, P.O. Box 426, Tampa, FL 33601. Representative: L. W. Fincher, (same address as applicant). Petroleum and petroleum products, in packages and in bulk, from Bradford, PA to VA, NC, SC, GA, FL, AL, MS, LA, and TN for 180 days. The purpose of this republication is to correct MC number. Supporting Shipper(s): Witco Chemical Corporation, 77 N. Kendall Avenue, Bradford, PA 16701. Send protests to: Donna M. Jones, TA, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 N.W. 53rd Terrace, Miami, FL 33166.

By the Commission.

**H. G. Homme, Jr.,**

*Secretary.*

[FR Doc. 79-17707 Filed 6-6-79; 8:45 am]

**BILLING CODE 7035-01-M**

May 29, 1979.

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**[Notice No. 89]**

## Motor Carrier Temporary Authority Applications

May 29, 1979.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

**Note.**—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

### Motor Carriers of Property

MC 1824 (Sub-91TA), filed May 18, 1979. Applicant: PRESTON TRUCKING COMPANY, INC., 151 Easton Blvd., Preston, MD 21655. Representative: Charles S. Perry (same as above). *Bananas,* from Baltimore, MD to Indianapolis, IN, for 90 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Peter Comtabad, Chiquita Brands, Inc., 15 Mercedes Dr., Montvale, NJ 07645. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 4194 (Sub-1TA), filed April 20, 1979. Applicant: GILBERT STORAGE & TRANSFER CORPORATION, 2501 Greene Street, Lynchburg, VA 24506. Representative: Elizabeth A. Purcell, 666 Eleventh Street NW., Suite 805, Washington, D.C. 20001. *Household goods* as defined by the Commission, between points in NC and VA on the one hand, and, on the other, points in AL, GA, FL and SC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ivory Forwarding, Inc., West Palm Beach, FL 33407; Ocean Air International, Inc., R.D. #1, Bargettstown, PA 15021; Swift International, Inc., 7901 Fourth Street North, Suite 207 St. Petersburg, FL 33734; Wiley & Wilson, Inc., P.O. Box 877, Lynchburg, VA 24505; National Forwarding Co., Inc., 2800 Roosevelt Road, Broadview, IL 60153. Send protests to: Charles F. Myers, DS, ICC, Room 10-502 Federal Bldg., 400 North 8th St., Richmond, VA 23240.

MC 8544 (Sub-34 TA), filed May 15, 1979. Applicant: GALVESTON TRUCK LINE CORPORATION, 7415 Wingate, Houston, TX 77011. Representative: Joe G. Fender, 711 Louisiana, Suite 1150. Houston, TX 77002. Common carrier over irregular routes. *Petroleum and petroleum products,* in containers; advertising matter and commodities used or distributed by retail or wholesale marketers or distributors of petroleum products from Ponca City, OK to points in TX on and east of a line extending from the Oklahoma-Texas state line along U.S. Highway 83 to the junction of U.S. Highway 277, thence along Highway 277 to the U.S.-Mexico boundary at or near Del Rio, TX for 180 days. Supporting shipper(s): Continental Oil Company, 5 Greenway Plaza E., Houston, TX 77046. Send protests to: John F. Mensing, District Supervisor, Interstate Commerce Commission, 515 Rusk Ave. No. 8610, Houston, TX 77002.

MC 24784 (Sub-27 TA), filed May 14, 1979. Applicant: BARRY, INC., 463 South Water, Olathe, Kansas 66061. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. *Iron and Steel Articles,* from the facilities of Roll Steel Corp. at Skokie, IL to points in AR, CO, IA, KS, LA, NE, OK and TX, for 180 days. An

underlying ETA seeks 90 days authority. Supporting shipper(s): Roll Steel Corp., 6101 Oakton St., Skokie, IL 60077. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 56244 (Sub-82 TA), filed April 25, 1979. Applicant: KUHN TRANSPORTATION COMPANY, INC., P.O. Box 96, R.D. No. 2, Gardners, PA 17324. Representative: John M. Musselman, P.O. Box 1146, 410 N. Third St., Harrisburg, PA 17108. *Grain and soybean products, and foodstuffs* (except commodities in bulk), from the facilities of Archer Daniels Midland Company at Decatur, IL and points in its commercial zone, to points in DC, MD, NJ, NY and PA, restricted to shipments originating at the indicated origins and destined to the indicated destinations for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Archer Daniels Midland Company, P.O. Box 1470, Decatur, IL 62525. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. 7th St., Room 620, Phila., PA 19106.

MC 73134 (Sub-4 TA), filed April 30, 1979. Applicant: SUPREME EXPRESS & TRANSFER CO., 3311 Chouteau, St. Louis, MO 63103. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. Contract irregular: *Copper, copper products, insulated tubing, and commodities used in the manufacture and distribution* of the foregoing commodities (except commodities in bulk), between the facilities of Cerro Copper Products Company at Sauget, IL on the one hand, and, on the other, points in KS, TX, OK, GA, TN, AR, KY, MO, IA, PA, AL, IN, IL, OH, WI, MI and MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Cerro Copper Products Company, P.O. Box 681, East St. Louis, IL, 62202. Send protests to: P. E. Binder, OC, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 104104 (Sub-17TA), filed April 30, 1979. Applicant: GEORGE A. FETZER, INC., Newton-Sussex Road, Augusta, NJ 07822. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Printing paper.* From Pulaski, NY to points in CT, NJ, and points in PA East of the Susquehanna River. For 180 days. Supporting shipper(s): Schoeller Technical Paper Sales, Inc., P.O. Box 250, Pulaski, NY 13142. Send protests to: Joel Morrows, D/S, ICC, 9 Clinton St., Rm 618, Newark, NJ 07102.

MC 104104 (Sub-18TA), filed May 10, 1979. Applicant: GEORGE A. FETZER, INC., Newton-Sussex Road, Augusta, NJ 07822. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Insulating materials and plastics, and on return materials and supplies used in connection therewith except in bulk from Netcong and Stanhope, NJ to points in the US east of the Mississippi River, except CT, DE, DC, KY, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, & WV, for 180 days. Supporting shipper(s): United States Mineral Products Company, Stanhope, NJ 07874. Send protests to: Joel Morrows, D/S, ICC, 744 Broad St., Rm 522, Newark, NJ 07102.

MC 106074 (Sub-108TA), filed May 7, 1979. Applicant: B & P MOTOR LINES, INC., Shiloh Rd and US Highway 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30342. *Foodstuffs (except in bulk)* from Milwaukee, WI to the facilities utilized by Carnation Company at Chattanooga, TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Carnation Company, 5045 Wilshire Blvd., Los Angeles, CA 90036. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd, Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 106074 (Sub-109TA), filed May 7, 1979. Applicant: B & P MOTOR LINES, INC., Shiloh Rd and US Highway 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Metal containers, metal container closures, metal container ends, and metal container accessories* from the facilities of Carnation Company at Mansfield, TX to Chattanooga, TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Carnation Company, 5045 Wilshire Blvd., Los Angeles, CA 90036. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd, Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 106074 (Sub-110TA), filed May 15, 1979. Applicant: B AND P MOTOR LINES, INC., Shiloh Road and US Highway 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Animal feed, canned and dry,* from Jefferson, WI to Chattanooga, TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Carnation Company, 5045 Wilshire Blvd., Los Angeles, CA 90036. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd., Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 107515 (Sub-1238TA), filed April 18, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, N.E., Atlanta, GA 30326. *Lighting fixtures and/or parts thereof* from the facilities of Lithonia Lighting, Div. of National Service Industries, Inc., at or near Cochran and Conyers, GA to points in AZ, CA, CO, CT, DE, ID, IN, KY, MD, MA, ME, MI, MT, NV, NH, NJ, NM, OH, OR, PA, RI, UT, VA, VT, WA, WV, WY and DC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Lithonia Lighting, Division of National Service Industries, Inc., Conyers, GA 30207. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 107515 (Sub-1239TA), filed May 1, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby and Richard M. Tettelbaum, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, N.E., Atlanta, GA 30326. *Chain saws, snow throwers and garden, lawn turf and golf course care equipment* from facilities of The Toro Company in Minneapolis-St. Paul, MN and points in their respective commercial zones to points in AL, AR, FL, GA, KY, LA, MS, NC, SC and TN for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Toro Company, 8111 Lyndale Avenue S., Minneapolis, MN 55420. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 107515 (Sub-1237TA), filed April 12, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby and Richard M. Tettelbaum, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, N.E., Atlanta, GA 30326. *Coffee and coffee products (except commodities in bulk),* from the facilities of The Folger Coffee Company, a subsidiary of The Procter & Gamble Company, New Orleans, LA, to points in FL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Proctor & Gamble Distributing Company, P.O. Box 599, Cincinnati, OH 45201. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 109804 (Sub-1TA), filed May 18, 1979. Applicant: BILLIE ORTON TRUCKING, Route 3, Memphis, MO 63555. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Ave., Kansas City, MO 64105. Contract

irregular: *Beer and containers,* between Grinnell, IA, on the one hand, and, on the other, Columbus, OH; Kansas City, MO–KS and its Commercial Zone; and East St. Louis, IL. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Grinnell Beverage Company, Inc., Grinnell, IA. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Off. Bldg., 911 Walnut Street, Kansas City, MO 64105.

MC 113784 (Sub-85TA), filed May 7, 1979. Applicant: LAIDLAW TRANSPORT LIMITED, 65 Guise Street, Hamilton, Ontario L8L 4M1. Representative: Douglas R. Gowland, (address same as above). *Ferronickel,* between points in PA, OH, MI and NY and ports of entry on the International Boundary between the United States and Canada located at MI and NY, for 180 days. Supporting shipper: Falconbridge Nickel Mines Limited, P.O. Box 40, Commerce Court West, Toronto, Ontario. Send protests to: R. H. Cattadoris, DS, ICC, 910 Federal Bldg., 111 W. Huron St., Buffalo, NY 14202. NOTE: Applicant does intend to tack this authority with authority it presently holds in MC–113784.

MC 114604 (Sub-73TA), filed May 10, 1979. Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer I, Forest Park, GA 30050. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Rd., N.E., Atlanta, GA 30326. *Frozen foods* from Memphis and Tossville, TN to points in AL, NC, SC, GA, LA, KY, VA and WV for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mid-South Refrigerated Warehouse Co., 1100 E. Parkway S., Memphis, TN 38114. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., NW., Rm. 300, Atlanta, GA 30309.

MC 115654 (Sub-144TA), filed May 1, 1979. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 Thirteenth St. N.W., Washington, DC 20004. *Heating and air conditioning equipment and parts and accessories for heating and air conditioning equipment (except commodities, the transportation of which because of size and weight require the use of special equipment and commodities in bulk, in tank vehicles)* from Davidson County, TN, to points in IL, IN, KY, MO, OH, that part of MI on and south of Michigan Hwy 10, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Heil Quaker Corporation, 1714 Heil Quaker Blvd., LaVergne, TN 37086. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 115654 (Sub-145TA), filed May 4, 1979. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 Thirteenth St. N.W., Washington, DC 20004. *Such commodities as are dealt in by wholesale and retail grocery house (except commodities in bulk)* from the facilities of Procter & Gamble at or near Cincinnati, OH, to points in TN (including the Memphis, TN commercial zone), for 180 days. Supporting shipper(s): The Procter & Gamble Distributing Company, P.O. Box 599, Cincinnati, OH 45201. Send protests to: Glenda Kuss, TA, ICC, Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 115904 (Sub-138TA), filed April 6, 1979. Applicant: GROVER TRUCKING CO., 1710 West Broadway, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Used computer paper and baled cardboard,* from Idaho Falls, ID to points in CA, OR and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Diversified Resources, 2195 Owen Street, Ammon, ID 83401. Send protest to: Barney L. Hardin, D/S, ICC, Suite 110, 1461 Shoreline Dr., Boise, ID 83706.

MC 115924 (Sub-36TA), filed April 23, 1979. Applicant: SUGAR TRANSPORT, INC., P.O. Box 4063, Port Wentworth, GA 31407. Representative: F. C. Williams, Jr., 1 Grange Road, Port Wentworth, GA 31407. *Contract carrier,* irregular routes, *Liquid fertilizer solutions, in bulk, in tank vehicles,* from points in Chatham County, GA, on the one hand, and on the other, to points in NC, SC, and FL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kaiser Agricultural Chemicals, Division of Kaiser Aluminum & Chemical Corp., P.O. Box 246, Savannah, GA 31402. Send protests to: G. H. FAUSS, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 116544 (Sub-174TA), filed April 30, 1979. Applicant: ALTRUK FREIGHT SYSTEMS, INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. box 10061, Palo Alto, CA 94303. *Frozen and non-frozen citrus products and citrus juices;* from FL to AZ, AR, CA, CO, IL, IA, KS, LA, MN, MS, MO, MT, NE, NV, NM, ND, OK, SD, TX, UT, WI and WY for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Shurfine-Central Corp., 211 N. Mannheim Rd., Northlake, IL 60164 and Southern Fruit Distributors, Inc., P.O. Box 8367, Orlando, FL 32806. Send protests to: District Supervisor, 211 Main, Suite 500, San Francisco, CA 94105.

MC 117304 (Sub-38TA), filed April 25, 1979. Applicant: DON PAFFILE d.b.a. PAFFILE TRUCK LINES, 816D N.W. Frontage Rd., Troutdale, OR 97061. Representative: George R. Labissoniere, 1100 Norton Bldg., Seattle, WA 98104. *Paper, paper products and materials, equipment and supplies used in manufacture and distribution of paper and paper products* between the facilities of Potlatch Corpn. at Lewiston, ID on the one hand and on the other, all points in CA, OR and WA for 180 days. A corresponding ETA, MC 117304 R–8 was granted 4/27/79 for 30+2, expires, 7/25/79, and a permanent will be filed within 60 days of grant. Supporting shipper(s): Potlatch Corpn., P.O. Box 1016, Lewiston, ID 83501. Send protests to: R. V. Dubay, D/S, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 119774 (Sub-101TA), filed May 3, 1979. Applicant: EAGLE TRUCKING COMPANY, P.O. Box 471, Kilgore, TX 75662. Representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116 and William A. Stanley, same as above. *Concrete cylinder pipe,* from the facilities of Gifford Hill American, at or near Grand Prairie, TX to Little Rock, AR for 180 days. Underlying ETA seeks 90 days authority. Supporting shipper(s): Gifford Hill American, 1004 Meyers Road, P.O. Box 1571, Grand Prairie, TX 75051. Send protests to: Opal M. Jones, TA, ICC, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 121664 (Sub-74TA), filed May 1, 1979. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Avenue South, Birmingham, AL 35201. *(1) Coil steel,* from Selma, AL to points in ND, SD, NE, KS, OK, MN, IA, MO, MI, IL, IN, KY, VA, MD, DE, NY, VT, NH, CT, RI, MA, and ME. *(2) Materials and supplies,* except in bulk, from points in ND, SD, NE, KA, OK, MN, IA, MO, MI, IL, IN, KY, VA, MD, DE, NY, VT, NH, CT, RI, MA, ME to Selma, AL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Polymer Metals, P.O. Box 37, Selma, AL 36701. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 123744 (Sub-53TA), filed May 11, 1979. Applicant: BUTLER TRUCKING COMPANY, P.O. Box 88, Woodland, PA 16881. Representative: E. Steward Butler, P.O. Box 88, Woodland, PA 16881. Brick,

from Caledonia and Morral, Ohio to points in Pennsylvania, New Jersey and Maryland for 180 days. Supporting shipper(s): Marion Brick Corporation, P.O. Box 548, Marion, OH 43302. Send protests to: J. J. England, D/S, I.C.C., 2111 Federal Building, Pittsburgh, PA 15222.

MC 123744 (Sub-54TA), filed May 11, 1979. Applicant: BUTLER TRUCKING COMPANY, P.O. Box 88, Woodland, PA 16881. Representative: Dwight L. Koerber, Jr., Esquire, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, D.C. 20001. *Iron and steel articles,* from the facilities of Jones & Laughlin Steel Corporation at Aliquippa, PA, Pittsburgh, PA and Youngstown, OH to points in NJ, DE, MD, VA, MO, those points in NY east of State Highway 12, and those points in IL located within the East St. Louis, IL, St. Louis, MO commercial zone as defined by the Commission, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jones & Laughlin Steel Corporation, 1600 W. Carson Street, Room 121, Pittsburgh, PA 15203. Send protests to: J. J. England, D/S, I.C.C., 2111 Federal Building, Pittsburgh, PA 15222.

MC 124004 (Sub-52TA), filed March 30, 1979. Applicant: RICHARD DAHN, INC., 620 West Mountain Rd., Sparta, NJ 07871. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a common carrier by motor vehicle, over irregular routes, transporting *dry fertilizer and fertilizer ingredients, in bulk, in dump vehicles,* from Hopewell, VA to points in the states of DE, MD, NJ, PA, VA, WV and NC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Allied Chemical Corporation, P.O. Box 2120, Houston, TX 77001. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 124554 (Sub-36TA), filed May 17, 1979. Applicant: LANG CARTAGE CORP., P.O. Box 1465, Waukesha, WI 53187. Representative: Richard Alexander, 710 N. Plankinton Ave., Milwaukee, WI 53203. Contract carrier; irregular routes; *Such merchandise as is dealt in by retail mail order houses,* from facilities of Stanley Home Products, Inc. at Dubuque, IA to points in Cook, Lake, Rock, Nobles, Pipestone, Murray, Lyon, Lincoln, Yellow Medicine, Chippewa, Lac Qui Parle, Swift, Big Stone, Traverse, Stevens, Grant, Douglas, Wilkin, Otter Tail, Wadena, Crow Wing, Aitkin, Cass, Hubbard, Becker, Clay, Norman, Mahnomen, Clearwater, Red Lake, Pennington, Polk, Marshall, Beltrami, Kittson, Roseau, Lake of the Woods, Koochiching, and Itasca Counties, MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Stanley Home Products, Inc., 3110 Washington St., Dubuque, IA 52001. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 124964 (Sub-36TA), filed April 23, 1979. Applicant: JOSEPH M. BOOTH, d.b.a., J. M. BOOTH TRUCKING, P.O. Box 907, Eustis, FL 32726. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract Carrier,* irregular routes, Cheese and cheese products, from Plymouth, WI and Van Wert, OH, to points in AL, FL, and GA under a continuing contract or contracts with Borden Foods, a Division of Borden, Inc. for 180 days. Supporting shipper(s): Borden Foods, Div. of Borden, Inc., 180 E. Broad Street, Columbus, OH 43215. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 125335 (Sub-60TA), filed April 9, 1979. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NB 68501. *Frozen foods,* from the facilities of The Pillsbury Company, at or near Murfreesboro and Nashville, TN, to points in the United States east of the Mississippi River for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Olivia M. Bradley, Traffic Manager, Frozen Foods Division, The Pillsbury Company, 608 Secons Avenue S., Minneapolis, MN 55402. Send protests to: Interstate Commerce Commission, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 125335 (Sub-61TA), filed April 12, 1979. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NB 68501. *Canned foodstuffs,* from facilities of Campbell Soup Co. at or near Maxton, NC to pts. in GA and FL, for 180 days. Supporting shipper(s): Campbell Soup Co., Maxton, NC 28364. Send protests to: Peter R. Guman, D/S, 600 Arch St., Rm. 3238, Phila., PA 19106.

MC 125335 (Sub-62TA), filed April 23, 1979. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NB 68501. *Candy and confectionery,* in vehicles equipped with mechanical refrigeration, from the facilities of M & M MARS COMPANY at Hackettstown and Elizabeth, NJ, and Elizabethtown, PA, to points in IL, WI and MN for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Daniel B. Craver, Traffic Manager, M&M/MARS, Division of Mars, Inc., Hackettstown, NJ 07840. Send protests to: ICC, 600 Arch Street, Room 3238, Phila., PA 19106.

MC 125335 (Sub-63TA), filed April 30, 1979. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NB 68501. *Motorcycles and recreational vehicles, parts and components and accessories thereof, and such commodities as are used in the manufacture, sale and distribution of motorcycles and recreational vehicles,* from the facilities of AMF, York Division, at or near York, and Middletown, PA, to points in WI, IA, MS, AL, GA, FL, KN, NB, MN and MO, and from Milwaukee, WI to the facilities of AMF, York Division, at or near York, PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): AMF, York Division, 1425 Eden Road, York, PA 17402. Send protests to: ICC, 101 N. 7th St., Room 620, Phila., PA 19106.

MC 125335 (Sub-64TA), filed May 7, 1979. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. *Cheese and cheese products in vehicles equipped with mechanical refrigeration,* from the facilities of Swift & Co. at or near Green Bay, WI to points in CT, DG, DE, GA, KY, MA, ME, MD, MI, NC, NH, NJ, NY, PA, RI, SC, TN, VA, VT, & WV for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Swift & Co., 115 W. Jackson Blvd., Chicago, IL 60604. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila. PA 19106.

MC 125335 (Sub-65TA), filed April 12, 1979. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. *Frozen foods,* from facilities of Rich Products Corps. at or near Appleton, WI, to Murfreesboro, TN and Atlanta, GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Rich Products Corp., Box 245, 1145 Niagara St., Buffalo, N.Y. 14240. Send protests to: Harvey Eckart, D/S, 600 Arch St., Rm 3238, Phila., PA 19106.

MC 127524 (Sub-22TA), filed May 9, 1979. Applicant: QUADREL BROS. TRUCKING COMPANY, INC., 1603 Hart

Street, Rahway, NJ 07065. Representative: John L. Alfano and Roy A. Jacobs, Esqs., 550 Mamaroneck Avenue, Harrison, NY 10528. *Lubricating oil,* in bulk, in special roll on—roll off tank trailers, from Bayonne, NJ to Baltimore, MD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Exxon Company, U.S.A., 800 Bell Street, Houston, TX 77001. Send protests to: Robert E. Johnston, DS, ICC, 744 Broad Street, Room 522 Newark, NJ 07102.

MC 127905 (Sub-1TA), filed May 3, 1979. Applicant: LYNN H. SCOTT, INC., 8532 Blossvale Road, Blossvale, NY 13308. Representative: Lynn H. Scott & Lemoyne D. Scott, Pres. & Vice-Pres., 8532 Blossvale Road, Blossvale, NY 13308. *Sand in tank vehicles, in bags in van vehicles and in dump vehicles,* from the Town of Annsville, NY (Oneida County), to points in AL, AR, GA, IL, IA, KY, LA, MN, MS, MO, NC, SC, TN and WI, for 180 days. ETA for 30 days only was granted under R with effective date of April 12, 1979. Thirty days extension granted with effective date of May 12, 1979. Supporting shipper(s): Whitehead Brothers Company, Douglas L. Finch, Traffic Coordinator, 60 Hanover Road, Florham Park, NJ 07932. Send protests to: Interstate Commerce Commission, 338–342 Federal Bldg., 436 Dwight Street, Springfield, MA 01103.

MC 127974 (Sub-17 TA), filed May 1, 1979. Applicant: P. LIEDTKA TRUCKING, INC., 110 Patterson Avenue, Trenton, N.J. 08610. Representative: Alan Kahn, Esquire, Two Penn Center Plaza, Philadelphia, PA 19102. *Roofing materials,* and *materials and supplies* used in the installation of roofing materials from the facilities of the Celotex Corporation in or near Chester, WV to points in NJ, PA and MA, for 180 days. Supporting shipper(s): Celotex Corporation, 1500 Dale Mabry, Tampa, FL 33607. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 128205 (Sub-76 TA), filed May 7, 1979. Applicant: BULKMATIC TRANSPORT COMPANY, 12000 South Doty Ave., Chicago, IL 60628. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. *Flour in bulk,* (1) from Hastings, MN to WI, IL, IN, MI, KY, OH, IA and MO; (2) From Alton, IL to WI, IA, MO, IN, MI, OH and KY for 180 days. Supporting shipper(s): Peavey Company, Peavey Building, 730 2nd Ave., S. Minneapolis, MN 55402. Send protests to: David Hunt, Transportation Assistant, 219 S. Dearborn St., Room 1386, Chicago, IL 60604.

MC 129784 (Sub-9 TA), filed April 23, 1979. Applicant: DAVISON TRANSPORT, INC., P.O. Drawer 846, Ruston, LA 71270. Representative: Tom E. Moore (same address as applicant). Applicant is seeking authority to operate as a common carrier over irregular routes transporting *petroleum and petroleum products, (except gasoline),* in bulk, from the facilities of Cross Oil Refinery at Smackover, AR to points in AL, AR, GA, IL, LA, MI, MS, MO, NC, OH, OK, TN, TX and WI, for 180 days. Supporting shipper(s): Cross Oil Refinery, P.O. Box 105, Smackover, AR 71762. Send protests to: Robert J. Kirspel, DS, ICC, T–9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 128964 (Sub-7 TA), filed May 1, 1979. Applicant: REES TRUCKING CO., INC., P.O. Box G, Houston, MO 65483. Representative: Herman W. Huber, 101 East High Street, Jefferson City, MO 65101. *Iron and Steel Articles,* from Chicago, IL, Lake Porter and LaPorte Counties, IN to Greene County, MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): General Electric Company, 2401 East Sunshine St., Springfield, MO 65804; Karchmer Steel, 4724 W. Maple, Springfield, MO 65802; Central States Stamping Co., Inc., 2958 E. Division, Springfield, MO 65802; Mono Manufacturing Company, Inc., P.O. Box 2787, C.S.S., Springfield, MO 65803. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO. 64106.

MC 133565 (Sub-15TA), filed April 9, 1979. Applicant: TRUE TRANSPORT, INC., P.O. Box 829, Newark, NJ 07101. Representative: Leamon McCoy, 15 Stockton Street, Newark, NJ 07105. Commodities requiring protection from heat or cold, having a prior or subsequent movement by water. Empty trailers, containers, and container chassis, having a prior or subsequent movement by water. Between points in the commercial zones of Baltimore, MD, New York, NY, Philadelphia, PA, Norfolk, VA, on the one hand, and, on the other points in CO, IN, IL, IA, KS, KY, MN, MO, MI, NE, ND, OH, SD, WI, and, in that part of PA on and west of a line beginning at the PA-NY state line, at or near Lawrenceville, PA, and extending along U.S. Highway 15 to Junction U.S. Highway 11 at or near Camp Hill, PA, thence along U.S. Highway 11 to the PA-MD state line. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are nine (9) supporting shippers on file at Newark, NJ and Washington, D.C. Send protests to: Irwin Rosen, TS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 133684 (Sub-29TA), filed March 27, 1979. Applicant: GORDON FAST FREIGHT, INC., 2205 Pacific Hwy E., Tacoma, WA 98422. Representative: Michael D. Duppenthaler, 211 S. Washington St., Seattle, WA 98104. *Charcoal, charcoal briquettes, lighter fluid, hickory chips, fireplace logs, (compressed from sawdust), and related barbecue items,* from White City, OR to points in AZ, CA, CO, ID, MT, NY, NM, UT, WA and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Husky Industries, Inc., 62 Perimeter Center E., Atlanta, GA 30346. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 135634 (Sub-8TA), filed March 18, 1979. Applicant: JOSEPH M. HANEY, SR., d.b.a., J. M. HANEY TRUCKING CO., 4754 Mahoning Ave., Youngstown, OH 44515. Representative: Robert J. Gill, Esq., 29 S. LaSalle St., Suite 740, Chicago, IL 60603. Contract carrier, irregular routes, *automobile parts, accessories, equipment and supplies,* except commodities in bulk and commodities which require specialized equipment, between the facilities of Midas International Corporation at or near Chicago, IL, and points in IN under a continuing contract(s) with Midas International Corporation, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Midas International Corporation, 4101 West 42 Place, Chicago, IL 60632. Send protests to: Mary Wehner, D/S, I.C.C., 731 Federal Bldg., Cleveland, OH 44199.

MC 135874 (Sub-168TA), filed May 15, 1979. Applicant: LTL PERISHABLES, INC., 550 East 5th Street South, South St. Paul, MN 55075. Representative: Paul Nelson (same address an applicant). *Building materials and supplies (except in bulk)* from the facilities of Alside, Inc. at or near Cuyahoga Falls, OH to Milan and Rock Island, IL, and St. Louis, MO-IL Commercial Zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Alside, Inc., P.O. Box 2010, Akron, OH 44309. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 135874 (Sub-169TA), filed May 15, 1979. Applicant: LTL PERISHABLES, INC., 550 East 5th Street South, South St. Paul MN 55075. Representative: Paul Nelson (same address as applicant).

*Building materials and supplies (except in bulk)* from the facilities of Alside, Inc. at or near Cuyahoga Falls, OH to points in the Upper Peninsula of MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Alside, Inc., P.O. Box 2010, Akron, OH 44309. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 138824 (Sub-24TA), filed April 19, 1979. Applicant: REDWAY CARRIERS, INC., 5910 49th St., Kenosha, WI 53140. Representative: Paul J. Maton, 10 S. LaSalle St., Suite 1620, Chicago, IL 60603. Contract carrier; irregular routes; *Glass containers and closures therefor* from facilities of Ball Corp. at or near Mudelein, IL; Lake and Cook Counties, IL, on the one hand, and, on the other, points in IA, MN & WI, for 180 days. Supporting shipper(s): Ball Corp., 345 S. High St., Muncie, IN 47302. Send protests to: G. Daugherty, TA, ICC, Federal Bldg., 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 138824 (Sub-25TA), filed April 17, 1979. Applicant: REDWAY CARRIERS, INC., 5910 49th St., Kenosha, WI 53140. Representative: Paul Maton, 10 S. LaSalle St., Suite 1620, Chicago, IL 60603. Contract carrier; irregular routes; *Food products, dry or liquid, in container, materials, and supplies incidental to and used in processing, canning and bottling of said food products,* restricted against transportation of commodities in bulk (1) between the facilities of Ocean Spray Cranberries, Inc., located at or near Kenosha, WI; North Chicago, IL; Montgomery, AL; Northeast, PA; Sulphur Springs, TX; Grawn, MI; Bordentown, NJ; Middleboro, MA and Lake Wales, FL and (2) between facilities named in (1) above, on the one hand, and, on the other, points in MO, WI, IL, IN, OH, KY, AR, MN, TN, AL, MS, GA, FL, SC, PA, LA, MI, ND, SD, IA, TX, OK, KS, NE, CO & NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ocean Spray Cranberries, Inc., 7600 S. 60th Ave., Kenosha, WI 53140. Send protests to: G. Daugherty, TA, ICC, Federal Bldg., 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 138875 (Sub-171TA), filed April 3, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). *Drugs, toilet preparations, health care products, magnesium hydroxide, and alumina calcined* (except in bulk) in vehicles equipped with mechanical refrigeration, from Lewes, DE, Friendship, NC, Lakewood, NJ and Philadelphia, PA to points in AZ, CA, ID, NV, OR, WA and UT. Restricted to traffic originating at named origins, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: McNeil Laboratories, 500 Office Center Drive, Fort Washington, PA 19034. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 138875 (Sub-172TA), filed April 5, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). *Frozen bakery products* (except commodities in bulk), from the facilities used by Ore-Ida Foods, Inc., located at Lake City, PA and Massillon, OH to Los Angeles, San Bernadino and Orange Counties, CA and Portland, OR and its commercial zone, for 108 days. An underlying ETA seeks 90 days authority. Supporting shipper: Ore-Ida Foods, Inc., P.O. Box 10, Boise, ID 83707. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 138875 (Sub-175TA), filed April 20, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). *Materials and supplies used in the manufacture, distribution, and installation of mobile homes, campers and recreational vehicles, except commodities in bulk,* from Chicago, IL to Boise, ID and Salem, OR and their respective commercial zones, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Triangle Home Products, Inc., 945 E. 93rd Street, Chicago, IL 60619. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 138875 (Sub-179TA), filed April 25, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). *Metal storage cabinets and steel shelving,* from Aurora, IL, Hatfield, PA, Dickson, TN, and Dallas, TX to Salt Lake City, UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Equipment Distributors, 560 N. 500 W., Salt Lake City, UT 84116. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 138875 (Sub-180TA), filed April 20, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). *Doors, door hardware and accessories,* from Portland OR to Salt Lake City, UT and its commercial zone. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Jim Walter Doors Divisions, Celotex Corporation a Subsidiary of Jim Walter Corporation, P.O. Box 66317, Portland, OR 97266. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 139254 (Sub-20TA), filed April 26, 1979. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Ave., Cleveland, OH 44114. Representative: John P. McMahon, Esq., 100 East Broad St., Columbus, OH 43215. Contract carrier, irregular routes, *synthetic rubber* (except commodities in bulk), from East Camden, AR, to points in the U.S. in and east of MN, IA, MO, AR, and LA, limited to a transportation service to be performed under a continuing contract(s) with The B. F. Goodrich Company, Chemical Division, for 180 days. Supporting shipper: The B. F. Goodrich Company, Chemical Division, 6100 Oak Tree Blvd., Cleveland, OH 44131. Send protests to: Mary Wehner, D/S, ICC, 731 Federal Bldg., Cleveland, OH 44199.

MC 139274 (Sub-7TA), filed April 6, 1979. Applicant: THE DANIEL COMPANY OF SPRINGFIELD, 419 E. Kearney, Springfield, MO 65803. Representative: Bruce McCurry, 910 Plaza Towers, Springfield, MO 65804. Contract, irregular, *General commodities* except articles of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between points in the U.S. (except AK and HI) under a continuing contract(s) with R. T. French Company of Rochester, NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The R. T. French Company, 4455 E. Mustard Way, Springfield, MO. Send protests to: John V. Barry, DS, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 139495 (Sub-446TA), filed April 23, 1979. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. *Chemicals, Pesticides, Insecticides, Fungicides and Weed Killing Compounds,* from Kansas City, MO to points in the States of AZ, CA, CO, ID, NM, OR, NV, UT, WA, WY, IL, FL, MS, TN, LA and TX, for 180 days,

common, irregular. Supporting shipper(s): Mobay Chemical Corporation, Agric. Chem. Div., P.O. Box 4913, Kansas City, MO 64120. Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 139495 (Sub-447TA), filed May 10, 1979. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. *Retail Stores Freight All Kinds*, from York, PA to Dallas, TX and Los Angeles, CA.; for 180 days, irregular; An underlying ETA seeks 90 days authority. Supporting shipper(s): McCrory Stores, Div. of McCrory Corp., 2955 East Market, York, PA. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Bldg., Wichita, KS 67202.

MC 139805 (Sub-4TA), filed April 1, 1979. Applicant: B MOTOR FREIGHT, INC., 451 Old Airport Rd., New Castle, DE 19720. Representative: Dennis M. Barnes, 1800 M St. NW., Washington, DC 20036. *Contract carrier*, irregular routes, *General commodities* (excluding bulk commodities and household goods) and *hazardous materials* (excluding Class A and B explosives) for the account of E. I. DuPont de Nemours & Co., between all points in NJ, DE, PA, TN and GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): E. I. DuPont de Nemours & Co., Wilmington, DE 19898. Send protests to: T. M. Esposito, Trans. Asst., 101 S. 7th St., Room 3238, Philadelphia, PA 19106.

MC 140615 (Sub-41TA), filed April 25, 1979. Applicant: DAIRYLAND TRANSPORT, INC., P.O. Box 1116, Wisconsin Rapids, WI 54494. Representative: Terrence Jones, 2033 K St. NW., Washington, DC 20006. *Such commodities as are dealt in by wholesale and retail drug stores* (except commodities in bulk) from facilities of Carter-Wallace, Inc., Cranbury and Lakewood, NJ to points in IL, IN, MI & OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Carter-Wallace, Inc., Half-Acre Rd., Cranbury, NJ 08512. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Room 619, Milwaukee, WI 53202.

MC 140945 (Sub-2TA), filed April 13, 1979. Applicant: JAMES W. CROWE, INC., 307 Brennan Rd., Columbus, GA 31903. Representative: C. E. Walker, P.O. Box 1085, Columbus, GA 31902. *Contract carrier: irregular routes: Architectural precast concrete viz: precast tile, slabs and building components, in containers, loose or on pallets, volume truckload minimum 36,000 pounds* between the plant site of Kendrick Concrete Products Company, Inc., at or near Columbus, GA, and all points and places in the States of AL, FL, and GA (to GA would be intrastate), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kendrick Concrete Products Co., Inc., 302 Brown Ave., Columbus, GA 31903. Send protests to: Sara K. Davis TA, ICC, 1252 W. Peachtree St. NW., Room 300, Atlanta, GA 30309.

MC 140615 (Sub-42TA), filed April 27, 1979. Applicant: DAIRYLAND TRANSPORT, INC., P.O. Box 1116, Wisconsin Rapids, WI 54494. Representative: Dennis Brown (same address as applicant). (1) *Paper and paper articles* from Neenah & Menasha, WI to points on and east of ND, SD, NE, CO, OK, TX and (2) *Materials, Parts and supplies used in the manufacture and distribution of paper and paper articles* from points on and east of ND, SD, NE, CO, OK, TX to Neenah & Menasha, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wisconsin Tissue Mills, Inc., 3rd St., Menasha, WI 54952. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 141804 (Sub-219TA), filed April 6, 1979. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman, P.O. Box 3488, Ontario, CA 91761. *Vehicle parts and accessories and steel wheels*, between points in San Diego County, CA, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK and TX, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Jay Bee Wheels, Division of Jay Bee Industries, 1352 Pioneer Way, El Cajon, CA 92020. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 140484 (Sub-43TA), filed May 4, 1979. Applicant: LESTER COGGINS TRUCKING, INC., 2671 E. Edison Ave., P.O. Box 69, Fort Myers, FL 33902. Representative: Frank T. Day, (same address as applicant). *Roofing, roofing materials and related products* (except commodities in bulk and in tank vehicles) from Tuscaloosa, AL to points in FL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Tamko Asphalt Products, Inc., 220 W. 4th, Joplin, MO 64801. Send protests to: Donna M. Jones, T/A, ICC, Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.

MC 140104 (Sub-7TA), filed April 24, 1979. Applicant: TOLEDO FRIGID LINES, INC., 4080 Fitch Road, Toledo, OH 43613. Representative: Jerry B. Sellman, 50 West Broad St., Columbus, OH 43215. *Contract carrier:* irregular routes: *(1) Such merchandise as is dealt in by wholesale, retail, chain grocery and food business houses, institutions, catalog showroom stores, and home center stores, except commodities in bulk, and (2) Equipment, materials and supplies used in the preparation and distribution of commodities described in (1) above*, between Toledo and Maumee, OH, on the one hand, and on the other, points in CA, CO, FL, ID, IL, IN, KY, MD, MA, MI, MN, MO, PA, TX, WA and WI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Seaway Food Town, Inc., 1020 Ford St., Maumee, OH 43537. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 143434 (Sub-2TA), filed April 27, 1979. Applicant: CHARLES McALPIN d.b.a. CHARLES McALPIN TRUCKING, 1420 Danville Road SW., Decatur, AL 35601. Representative: D. H. Markstein, Jr., 512 Massey Building, Birmingham, AL 35203. *Paper and paper products*, from the facilities of Champion International Corp., at or near Courtland, AL; to points in AZ, CA, NM, OR, TX and WA. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Champion International Corporation, Knightsbridge Drive, Hamilton, OH 45020. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 143594 (Sub-9TA), filed May 7, 1979. Applicant: NATIONAL BULK TRANSPORT, INC., P.O. Box 5078, Atlanta, GA 30302. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Liquid chemicals, in bulk, in tank vehicles*, from the facilities of Georgia Pacific Corp. at or near Plaquemine, LA to Crossett, El Dorado, Little Rock, Malvern, Ashdown, Pine Bluff, Ft. Smith, and Van Buren, AR, Lufkin, Beaumont, Houston, Dallas and Waxahachie, TX, Memphis, TN, Taylorsville, Louisville, Gulfport, Smith County and Hamilton, MS, Russellville, SC, Conway, NC, Brewton, AL, Cincinnati and Columbus, OH, Waxdale, WI, Valliant, OK, Palatka, FL and Vienna and Port Wentworth, GA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Georgia Pacific Corp., P.O. Box 629, Plaquemine, LA

70764. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St. NW., Room 300, Atlanta, GA 30309.

MC 143775 (Sub-93TA), filed April 30, 1979. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke (same address as applicant). *Carpet strips, molding, staples, tools, nails, adhesives, sealant, solvents, stains, wood preservatives and materials, equipment and supplies used in the manufacture, sale and distribution thereof,* (1) from Calexico, CA to points in the United States (except AK and HI), (2) from Los Angeles County, CA to Calexico, CA; restricted to traffic originating at or destined to the facilities of Roberts Consolidated Industries, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Roberts Consolidated Ind., 600 N. Baldwin Park Blvd., City of Industry, CA 91749. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 143775 (Sub-94TA), filed May 2, 1979. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke (same address as applicant). *General commodities (except Classes A & B explosives, household goods, commodities in bulk and those requiring the use of special equipment)* (1) from Atlanta, GA, Boston, MA, Jersey City, NJ, New York, NY, Charlotte, NC, Greensboro, NC, Philadelphia, PA, and Greenville, SC, and their respective commercial zones to AZ, CA and NM, (2) from Los Angeles, CA and its commercial zone, to Phoenix, AZ and Kansas City, MO, (1) and (2) above restricted to traffic originating at or destined to the facilities of LAWI/CSA Consolidators, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: LAWI/CSA Consolidators, Inc., 805 N. Brand Blvd., Glendale, CA 91203. Send protests to: Ronald R. Mau, DS, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 143775 (Sub-95TA), filed May 2, 1979. Applicant: PAUL YATES, INC., 6601 W. Orangewood, Glendale, AZ 85301. Representative: Edward N. Button, 1329 Pennsylvania Ave., Hagerstown, MD 21740. *General commodities (except Classes A & B explosives, commodities in bulk, household goods and commodities requiring special equipment),* between the facilities of the Charter Oaks Shippers Cooperative Association, Inc., at or near Berlin, CT on the one hand, and on the other, points in WA, OR, CA, NV, ID, AZ, UT, MT, WY, CO, NM, TX, and KS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: The Charter Oaks Shippers Cooperative Association, Inc., 1 Parkland Dr., Darien, CT 06820. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 144884 (Sub-2TA), filed April 30, 1979. Applicant: ARTHUR E. JOHNSTON & MICHAEL A. JOHNSTON, d/b/a/ JOHNSTON TRUCKING, P.O. Box 325, Spearfish, SD 57783. Representative: J. Maurice Andren, 1734 Sheridan Lake Road, Rapid City, SD 57701. *Lumber and lumber products* from Newcastle, WY and points in its commercial zone to points in IL, IN, KY, MI, OH, and WI for 180 days. Supporting shipper(s): Cambria Forest Industries, Inc., P.O. Box 490, Newcastle, WY 82701. Send protests to: J. L. Hammond, DS, ICC, Room 455, Federal Bldg., Pierre, SD 57501.

MC 145054 (Sub-16TA), filed May 2, 1979. Applicant: COORS TRANSPORTATION COMPANY, 5101 York Street, Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln Street, Denver, CO 80264. *Foodstuffs (canned or preserved)* from facilities of Heinz USA, Div. of H. J. Heinz Co., Iowa City and Muscatine, IA to points in CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Heinz USA, Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Herbert C. Ruoff, District Supervisor, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 145034 (Sub-1TA), filed May 2, 1979. Applicant: SKY TRUCKING COMPANY, 2163 Hancock Street, San Diego, CA 92110. Representative: Milton W. Flack, 4311 Wilshire Blvd., Suite 300, Los Angeles, CA 90010. *General commodities (except Classes A and B explosives and articles of unusual value) in containers or in trailers,* between Los Angeles, CA, on the one hand, and, on the other, points in San Diego County, CA, for 180 days. Restricted to the transportation of traffic having an immediately prior or subsequent movement by water. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Balfour Dalgety Marine, Inc., 700 S. Flower Street, Los Angeles, CA 90017; "K" Line-Kerr Corporation, 1 Market Plaza, San Francisco, CA 94105; Kerr Steamship Company, Inc., 1 Market Plaza, San Francisco, CA 94105; Evergreen-United Corporation, 400 Oceangate, Suite 128, Long Beach, CA 90802. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 145044 (Sub-4TA), filed April 26, 1979. Applicant: FOREDECK TRANSPORTATION, INC., Whitewood Lane, Oak Ridge, NJ 07438. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Confectionery,* between St. Louis, MO on the one hand, and, on the other, points in the U.S. (except AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Switzer Candy Co., Division of Beatrice Foods, Inc., 1600 N. Broadway, St. Louis, MO 63102. Send protests to: Joel Morrows, D/S, ICC, 9 Clinton St., Room 618, Newark, NJ 07102.

MC 145094 (Sub-3TA), filed April 27, 1979. Applicant: BOBBY KITCHENS, INC., P.O. Box 6161, Jackson, MS 39208. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. *Contract carrier:* irregular routes: (1) *Tile* from Houston, MS to points in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT and WA, and (2) *Soapstone* in bags, from Riverside and VanHorn, TX to Houston, MS, for the account of Spartek, Inc., Gulf States Ceramic Tile div., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Spartek, Inc.—Gulf States Ceramic, P.O. Box 472, Houston, MS 38851. Send protests to: Alan Tarrant, D/S, ICC, Room 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 145454 (Sub-6TA), filed April 16, 1979. Applicant: SOUTHERN REFRIGERATED TRANSPORTATION COMPANY, INC., 2154 Green Valley Drive, Crown Point, IN 46307. Representative: Anthony E. Young, 29 S. LaSalle St., Suite 350, Chicago, IL 60603. *Bananas, pineapples and plantains,* from Tampa, FL and Charleston, SC to points in IN, OH, MI, IL, KY, MO, KS, IA, WI and MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Del Monte Banana Company, P.O. Box 011940, Miami, FL 33101. Send protests to: Annie Booker, TA, ICC, 1386 Everett Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 145435 (Sub-5TA), filed May 9, 1979. Applicant: WESTERN AG INDUSTRIES, INC., 2750 No. Parkway, Fresno, CA 93771. Representative: Roland J. Mefford (same address as above). *Contract carrier, irregular routes: Carpet, carpet padding, and floor tile,* from points in GA, IL, NJ, to points in AZ and CA, for 180 days. Supporting shipper: Butler-Johnson Corp., 5031–24th St., Sacramento, CA 95822. Send protests to: District Supervisor, 211

Main, Suite 500, San Francisco, CA 94105.

MC 145624 (Sub-2TA), filed April 30, 1979. Applicant: J. V. CARBONE, INC., 33 Marion Avenue, New Providence, NJ 07974. Representative: Theodore Polydoroff, Suite 301, 1307 Dolly Madison Boulevard. *Sand and gravel,* in bulk, in dump vehicles. From the facilities of Warner Company, Falls Township, PA to points in NJ and NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Warner Company, 1721 Arch Street, Philadelphia, PA 19103. Send protests to: Robert E. Johnston, DS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 146044 (Sub-1TA), filed April 24, 1979. Applicant: EDJO, INC., P.O. Box 748, Arcata, CA 95521. Representative: Robert E. Thomas (same address as applicant). *Lumber, Plywood, and Baled wood pulp* from points in Humboldt County, CA to points in Mendocino and Shasta Counties, CA for subsequent out of state movement by rail, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Simpson Timber Company, P.O. Drawer V, Arcata, CA 95521. Send protests to: A. J. Rodriguez, DS, ICC, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 146624 (Sub-2TA), filed April 23, 1979. Applicant: CHARLES W. MILLER and HOWARD W. MILLER, d.b.a. MILLER BROS. TRUCKING, 800 Cherry St., Liberty Center, OH 43532. Representative: A. Charles Tell, 100 East Broad St., Columbus, OH 43215. *Containers, container closures, glassware, packaging products, container components and scrap materials, and materials, equipment, and supplies used in the manufacture, sale, and distribution of the foregoing commodities (except commodities in bulk, in tank vehicles, and those which because of size or weight require the use of special equipment),* between the facilities of Libbey Glass Division of Owens-Illinois, Inc. at Toledo, OH, Shreveport, LA, and Mire Loma, CA, restricted to movements from or to the facilities of Owens-Illinois, Inc., for 180 days. Supporting shipper(s): Libbey Glass, Div. Owens-Illinois, Inc., P.O. Box 919, Toledo, OH 43693. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19100.

MC 146725 (Sub-1TA), filed April 13, 1979. Applicant: FREEPORT TRANSPORT, INC., P.O. Box 1275, Freeport Center, Clearfield, UT 84016. Representative: Bruce W. Shand, 430 Judge Building, Salt Lake City, UT 84111. *Lumber, lumber mill products, and wood products,* from the facilities of Potlatch Corporation, located at or near Coeur d'Alene, St. Maries, Potlatch, Lewiston, Kamiah, Spalding, Jaype (near Pierce), Santa, and Post Falls, ID to points in IN, MI, MO, and OH, for 180 days. An underlying ETA requests 90 days authority. Supporting shipper(s): Potlatch Corporation, P.O. Box 1016, Lewiston, ID 83501. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 146735 (Sub-1TA), filed April 17, 1979. Applicant: R. J. ANDERSON, INC., 1020 Heinz Street, Berkeley, CA 94710. Representive: William D. Taylor, Handler, Baker & Greene, P.C., 100 Pine Street, Suite 2550, San Francisco, CA 94111. *General commodities* (except classes A&B explosives, household goods, items of extraordinary value and commodities in bulk), between Stockton, Sacramento, Fairfield, San Francisco, Oakland, Watsonville, Richmond, Novato and Alameda, CA, for 180 days. Restricted to traffic having prior or subsequent movement in interstate commerce either by rail, ocean vessel and/or motor vehicle. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are eight (8) shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: A. J. Rodriguez, DS, ICC, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 146754 (Sub-2TA), filed March 30, 1979. Applicant: TENNANT TRUCK LINES, INC., P.O. Box 336, Orion, IL 61273. Representive: Joseph Winter, 29 South La Salle St., Chicago, IL 60603. *Such commodities as are dealt in or used by manufacturers and dealers of agricultural equipment, industrial equipment, and lawn and leisure products (except commodities in bulk),* from the facilities used by International Harvester Company at East Moline, Moline and Rock Island, IL to points in IN and IA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): International Harvester Company, 401 North Michigan Ave., Chicago, IL 60611. Send protests to: Annie Booker, TA, ICC, 1386 Everett Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 146815 (Sub-2TA), filed April 16, 1979. Applicant: ROLAND GIGUERE, d.b.a. Gigurere & Son R.F.D. No. 1 Pownal Rd., Auburn, ME 04210. Representive: J. Michael May, Suite 508, 1447 Peachtree St., N.E., Atlanta, GA 30309. Contract: Irregular: *Bakery waste and sweepings, and feed ingredients,* in bulk, between the facilities of International Bakerage, Inc., at Carteret, NJ, on the one hand, and, on the other, points in CT and ME, for 180 days. Supporting shipper(s): International Bakerage, Inc., Suite 1–M 3300 Northeast Expressway, Atlanta, GA 30341. Send protests to: Donald G. Weiler, District Supervisor, ICC, 76 Pearl St., Rm. 303, Portland, ME 04111.

MC 146824 (Sub-1TA), filed May 2, 1979. Applicant: BEARCLAW INDUSTRIES, INC., 201 Rio Trail, Amarillo, TX 79108. Representive: Weldon Reed, Jr., 4231 West 2nd, Amarillo, TX 79106. *Foodstuffs, additives and byproducts,* packaged, unpacked, and in bulk, from Cimarron and Texas Counties, OK to points in AL, FL, LA, MA, MS, NY, SC, TX, NM, AZ, CA, CO, WA, and OR, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Milo Products, Inc., Box 908, Boise City, OK 73933. Send protests to: Martha Powell, Transportation Assistant, 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 146825 (Sub-1TA), filed April 27, 1979. Applicant: HICKMAN INTERSTATE SYSTEMS, 710 Livestock Exchange Bldg., Omaha, NE 68107. Representive: Chris Hickman (same address as above). *Contract carrier:* irregular routes: *Prepared frozen foods, meats, meat products, meat by-products and packinghouse products, fish and poultry products; materials, equipment and supplies used in the manufacture, sale and distribution of the above,* between Omhaam NE and Council Bluffs, IA, on the one hand, and, on the other, Miami and Jacksonville, FL; Birmingham, Anniston, Mobile, AL; Memphis and Nashville, TN; Atlanta, GA; Lexington, Lousiville, and Nicholasville, KY; Monroe, New Orleans, and Shreveport, LA; Jackson and Southaven, MS; Phoenix, AZ; Los Angeles, Santa Fe Springs, San Francisco, Sacramento, Richmond, Fresno, Fremont, and Oakland, CA; San Angelo, Lubbock, Dallas, Irving, Farmers Branch, Brownwood, El Paso, Lufkin, San Antonio, Victoria, Ft. Worth, Grand Prairie, and Houston, TX; Albuquerque, NM; Bonner Springs, Hutchinson, Wichita, Elwood, Kansas City, and Scott City, KS; Sikeston, Cape Giraudeau, Springfield, Kansas City and St. Joseph, MO; Salt Lake City and Layton, UT; Boise, ID; Portland and Clackamas, OR; Seattle, Bellevue, and Spokane, WA, and their respective commercial zones, for 180 days, under continuing contract with Blue Star Foods, Inc. An underlying ETA seeks 90 days authority. Supporting shipper(s): Blue Star Foods, Inc., 1023 4th St., Council Bluffs, IA 51501. Send

protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146834 (Sub-1TA), filed May 3, 1979. Applicant: HOWARD GRIGGS TRUCKING, INC., Route 1, Box 187, Tuskegee, AL 36083. Representative: Howard Griggs, President (same address as applicant). *Rock, sand, soil, gravel, stone, clay and asphalt,* in bulk, in dump trucks; and *fertilizer,* in bulk or in bags, from points in Muscogee, Talbot, Taylor and Troup Counties, GA, to points in Russell, Lee, Macon, Chambers, Bullock and Tallapoosa Counties, AL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Castone Corporation, P.O. Box 747, Opelika, AL 36801; Dixie Concrete Pipe Company, Inc., Route 3, Box 470, Tuskegee, AL 36083; Starr and Sons Construction Co., Inc., Route 1, Box 61, Auburn, AL 36830; B. W. Capps and Son, Route 1, Box 365, Opelika, AL 36801; East Alabama Paving Co., Inc., Box 11, Old Columbus Road, Opelika, AL 36801. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616–2121 Bldg., Birmingham, AL 35203.

MC 146844 (Sub-1TA), filed April 26, 1979. Applicant: NATIONAL TRUCK BROKERAGE, INC. d.b.a. HICKS MOTOR LINE, 219 West Main, P.O. Box 176, Humboldt, TN 38343. Representative: Thomas A. Stroud, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *Meat, meat products, meat by-products, and articles distributed by meat packing houses, as described in Sections A and C of Appendix I to the Report and Descriptions in Motor Carrier Certificates 61 M.C.C. 209 and 766, (except hides and commodities in bulk), and foodstuffs, when transported in the same vehicle at the same time with the commodities described above,* from the facilities of Reelfoot Packing Company at Union City, TN and Humboldt, TN to points in the United States (except AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Reelfoot Packing Company, Union City, TN 38261. Send protests to: Floyd A. Johnson, DS, ICC, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 146845 (Sub-1TA), filed April 19, 1979. Applicant: J. D. RAY COMPANY, 107 Glenwood Drive, Americus, GA 31709. Representative: Norman J. Bolinger, 1729 Gulf Life Tower, Jacksonville, FL 32207. *Contract carrier,* irregular route; *particleboard, finished and unfinished, and materials, equipment, and supplies used in the manufacture, sale, and distribution of particleboard, finished and unfinished,* between the facilities of Designs of Americus, Inc. at or near Americus, GA, on the one hand, and, on the other, points in AL, FL, NC, and SC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Designs of Americus, Inc., Industrial Blvd., Americus, GA 31709. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 146855 (Sub-1TA), filed April 23, 1979. Applicant: JOEL WEHRMAN, Rt. 2, Box 2011 (Stohler Rd.), Selah, WA 98942. Representative: Henry C. Winters, Evergreen Bldg., Renton, WA 98055. Contract, irregular, *plastic packaging articles and materials and supplies* used in the production of plastic packaging articles between points in the states of AR, CA, ID, IA, MT, OR and WA, restricted to the transportation of traffic originating at or destined to facilities of Western Foam Pak, Inc. A corresponding ETA was granted April 23, 1979, for 30 + 2, MC 146855R. Supporting shipper(s): Western Foam Pak, Inc., 1111 N. 20th Ave., Yakima, WA 98902. Send protests to: R. V. Dubay, D/S, ICC, 114 Pioneer Courthouse, Portland, Oregon, 97204.

MC 146865 (Sub-1TA), filed April 16, 1979. Applicant: M. T. SERVICES, INC., 6513 Landay Ave., Baltimore, MD 21237. Representative: James W. Lawson, 1511 K St., N.W., Washington, DC 20005. *General commodities (except those of unusual value, Classes A & B Explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* having a prior to subsequent movement by rail or water, between Baltimore, MD and points in the States of MD, DE, NJ, NY, PA, OH, WV, VA and Washington, DC, for 90 days. An underlying ETA was granted for 90 days. Supporting shipper(s): There are 5 letters in support of this application. Their statements may be examined at the office listed below and Headquarters. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 146884 (Sub-2TA), filed April 26, 1979. Applicant: HALL'S FAST MOTOR FREIGHT, INC., 330 Oak Tree Avenue, South Plainfield, NJ 07080. Representative: Ronald I. Shapss, Esq., 450 Seventh Avenue, New York, NY 10001. Contract carrier, irregular routes for 180 days. *Liquid penicillin* in totes, and empty totes. Between New Brunswick and South Plainfield, NJ, on the one hand, and, on the other, Kenly, NC. An underlying ETA seeks 90 days authority. Supporting shipper(s): E. R. Squibb & Son, Inc., 5 Georges Road, New Brunswick, NJ 08902. Send protests to: Irwin Rosen, TS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 146885 (Sub-1TA), filed May 1, 1979. Applicant: BEN CAPOBIANCO TRUCKING, INC., 5275 Talawanda Dr., Fairfield, OH 45014. Representative: Jerry B. Sellman, Muldoon, Pemberton & Ferris, 50 W. Broad St., Columbus, OH 43215. *General commodities (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* from the facilities of Nationwide Shipper Cooperative Association, Inc., located at or near Cincinnati, OH, to points in AZ, CA and NV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Nationwide Shipper Cooperative Association, Inc., Robert A. Murphy, General Manager, 1400 Gest St., Cincinnati, OH 45203. Send protests to: Bureau of Operations, ICC, Wm. J. Green, Jr., Federal Bldg., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 146895 (Sub-1TA), filed May 3, 1979. Applicant: JOHNNY J. FOWLKES, J. J. FOWLKES TRUCKING COMPANY, Rt. 2, Box 90, Selma, AL 36701. Representative: Terry P. Wilson, 420 South Lawrence Street, Montgomery, AL 36104. *Malt beverages, in containers, and related advertising materials,* from Jacksonville, FL, to Selma, AL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Capital City Beverage Co. of Selma, Inc., 497 Oak Street, Selma, AL 36701. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 147005 (Sub-1TA), filed April 9, 1979. Applicant: STEPHEN J. GROVE, d.b.a. GROVE TRUCKING, 7297 Village Parkway, Dublin, CA 94566. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108. *Foodstuffs,* in vehicles equipped with mechanical refrigeration, from the United States Department of Defense Perishable Subsistence Center at Alameda, CA to points in the States of NV, OR and UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): United States Department of Perishable Subsistence Center, 2155 Mariner Square Loop, Alameda, CA 94566. Send protests to: District Supervisor M. M. Butler, 211 Main, Suite 500, San Francisco, CA 94105.

MC 147015 (Sub-1TA), filed May 1, 1979. Applicant: JAMES P. TAYLOR d.b.a. JAMES TAYLOR TRUCKING, 3718 Gass Lake Road, Manitowoc, WI 54220. Representative: Wayne W.

Wilson, 150 East Gilman Street, Madison, WI 53703. *Lime and limestone products* (except in bulk, in tank vehicles) from the facilities of Rockwell Lime Company in Manitowoc County, Wisconsin to points in IL, IN, IA, MI, MN and MO. Authority sought for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Rockwell Lime Company, Route 2, Box 124, Manitowoc, WI 54220. Send protests to: John E. Ryden, DS, ICC, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 147034 (Sub-1TA), filed May 14, 1979. Applicant: ALBANESE TRANSPORT, INC., 3537 Apulia Road, Jamesville, NY 13078. Representative: Frank Pompo, 820 University Bldg., Syracuse, NY 13201. *Wood chips, sawdust, bark, rough sawn lumber, planned lumber pallets, all in bulk,* from Cazenovia and Syracuse, NY and its commercial zone to all points in PA, VA, NJ, NC and MD, with returned, rejected, refused products of the same description in reverse direction, for 180 days. Underlying ETA for 90 days under R granted and effective May 7, 1979. Supporting shipper(s): B & B Lumber Company, Inc., Robert H. Booher, Pres., Allied Chemical Quarry, Jamesville, NY 13078. Johnson Bros. Lumber, Paul A. Johnson, Owner, Balina Road, Cazenovia, NY 13035. Send protests to: Interstate Commerce Commission, 910 Federal Bldg., 111 West Huron St., Buffalo, NY 14202.

MC 147035 (Sub-1TA), filed May 7, 1979. Applicant: J. HOWARD LEASING, INC., 253 Southwest Cutoff, Worcester, Massachusetts 01604. Representative: James F. Martin, Jr., 8 W. Morse Road, Bellingham, MA 02019. Contract carrier: irregular routes: *Frozen concentrates, materials and supplies,* between the facilities of Newton Foods, Inc., Taunton, MA, on the one hand, and, on the other, points in ME, NH, VT, MA, RI, CT, NY, NJ, PA, MD, DE, WV, VA, FL, IL, MI and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Newton Foods, Inc., 500 Turnpike Street, Canton, MA 02021. Send protests to: David M. Miller, DS, ICC, 436 Dwight Street, Springfield, MA 01103.

MC 147045 (Sub-1TA), filed May 4, 1979. Applicant: CALIFORNIA TRANSPORTATION LABOR, INC., 6901 South Eastern Avenue, Bell Gardens, CA 90201. Representative: Wyman C. Knapp, Knapp, Grossman & Marsh, 1800 UCB Bldg., 707 Wilshire Blvd., Los Angeles, CA 90017. *Refined petroleum products in bulk,* from points in Los Angeles County, CA, to points in Clark and Nye Counties, NV; and, from points in Los Angeles County, CA, to Phoenix, Tucson, and Bull Head City, AZ, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Newhall Refining Co., Inc., 22674 N. Clampilt Rd., Newhall, CA 91321. Send protests to: Irene Carlos, P.O. Box 1551, Los Angeles, California 90053.

MC 147074 (Sub-1TA), filed May 17, 1979. Applicant: E Z FREIGHT LINES, Gould & E. 46th Street, Bayonne, NJ 07002. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Aluminum extrusions, aluminum billets and aluminum ingots. (1) From Coldwater, MI to New Brunswick, NJ and Winton and Burlington, NC and (2) From Winton and Burlington, NC to DE, IN, MD, MI, NJ, KY, OH, PA, VA, and WV for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): New Jersey Aluminum Co., P.O. Box 73, North Brunswick, NJ 08902. Send protests to: Robert E. Johnston, DS, ICC, 744 Broad Street, Room 522, Newark, NJ 07102.

MC 147104 (Sub-1TA), filed May 14, 1979. Applicant: WILLIAM OLINGER and MICHAEL OLINGER, d.b.a. OLINGER TRUCK SERVICE, Route 1, Box 182, Hector, MN 55342. Representative: James E. Ballenthin, 630 Osborn Building St. Paul, MN 55102. *Beat pulp pellets* from Renville, MN to Superior, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Southern Minnesota Sugar Corporation, 400 South County Road 18, Room 490, Minneapolis, MN 55426. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 147185 (Sub-1TA), filed May 9, 1979. Applicant: STEVE FARRAR, P.O. Box 31, Waynesboro, MS 39367. Representative: Kent F. Hudson, 202 Main St., Purvis, MS 39475. *Water, drilling mud, oil spillage, and bulk sediments in connection with oil and gas exploration, production, discovery and drilling* from Waynesboro, MS, to points in AL, FL, and LA, for 180 days. Supporting shipper(s): Getty Oil Co., P.O. Box 16878, Mobile, AL 36616. Chesley-Pruet Drilling Co., P.O. Box 324, Laurel, MS 39440. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 147204 (Sub-1TA), filed May 16, 1979. Applicant: JACK'S TRUCK RENTAL, INC. Route 3 Box 61, Holts Summit, MO 65043. Representative: Mrs. Chester Surface, Route 3 Box 61, Holts Summit, MO 65043. *Freight, all kinds,* in straight or mixed shipments, between Cedar City, Jefferson City and Moberly, MO on the one hand, and, on the other, points and places in Missouri within 75 miles thereof RESTRICTED to shipments having a prior or subsequent move by rail in TOFC service. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): McGraw-Edison Co., Portable Appliance and Tool Group, 1801 N. Stadium Blvd., Columbia, MO 65201. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 147314 filed May 10, 1979. Applicant: GARFIELD TRANSPORTATION SYSTEMS, INC., 1426 Clark Street, Montreal, PQ, Canada H2X 2R3. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. (1) *General commodities* (except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), in containers or trailers, restricted to the transportation of shipments having a prior or subsequent movement by water in foreign commerce, and in bond, between ports of entry on the United States—Canada Boundary Line in NY and VT on the one hand, and, on the other, Weehawken, NJ, and (2) *Empty containers, trailers, and trailer chassis,* from Weehawken, NJ to ports of entry on the US—Canada Boundary Line in NY and VT, for 180 days. Supporting shipper(s): Aquatainer Ltd., 465 St Jean Street, Montreal, PQ, Canada H2Y 2R6. Send protests to: ICC, PO Box 548, Montpelier, VT 05602.

MC 147315 TA, filed May 4, 1979. Applicant: TRIWAYS, INC., 2455 E. 27th St., Los Angeles, CA 90058. Representative: Willam Davidson (same as above). Contract carrier, irregular routes: *Garments on hangers, wearing apparel, piece goods cut or uncut, carpeting, draperies, furniture blanket wrapped or in cartons and freight all kinds in unitized loads.* Points in Los Angeles County and Orange County California on the one hand, and Utah and Nevada on the other hand, for 180 days. Supporting shipper(s): Catalina Inc., 6040 Bandini Blvd., Los Angeles, CA 90040. Send protests to: Irene Carlos, TA, P.O. Box 1551, Los Angeles, CA 90053.

By the Commission.

**H. G. Homme, Jr.,**

*Secretary*

[FR Doc. 79-17708 Filed 6-6-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 90

## Motor Carrier Temporary Authority Applications

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

**Note.**—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

### Motor Carriers of Property

MC 1515 (Sub-264TA), filed May 17, 1979. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: Lat J. Celmins (same address as applicant). Common, Regular, *Passengers and their baggage and express and newspapers in the same vehicle with passengers,* (Route 1) between Bay Shore, NY and Riverhead, NY, serving all intermediate points: From Bay Shore over NY Hwy 27 to Junction NY Hwy 51, then over NY Hwy 51 to Riverhead, and return over the same route, (Route 2) between Junction NY Hwy 101 and NY Hwy 27 and Riverhead, NY, serving all intermediate points: From Junction NY Hwy 101 and NY Hwy 27 over NY Hwy 101 to Junction NY Hwy 495, then over NY Hwy 495 to Junction NY Hwy 24, then over NY Hwy 24 to Riverhead, and return over the same route, for 180 days. An underlying ETA seeks 90 days authority. Applicant requests to tack this authority with authority it presently holds in No. MC 1515. Supporting shipper(s): 1. Cantin Fabrics, 301 E. Main St., Riverhead, NY 11901. 2. Riverhead Stationery, 121 Main St., Riverhead, NY. 3. Karen H. Philipps, 14 Vautrin Ave., Holtsville, NY 11742. 4. Jermaine Aquino, P.O. Box 755, Southold, NY 11971. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 1515 (Sub-265TA), filed May 21, 1979. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: Lat J. Celmins (same address as applicant). Passengers and their baggage and express and newspapers in the same vehicle with passengers, between Phoenix, AZ and Tempe, AZ, serving the intermediate point of Scottsdale, AZ only: From Phoenix over city streets via Scottsdale to Tempe, and return over the same route, for 180 days. Applicant requests to tack this authority with authority it presently holds in No. MC 1515. Supporting shipper(s): There are ten (10) supporting shippers. Their statements may be examined at the office listed below and headquarters. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 1515 (Sub-266TA), filed May 14, 1979. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: Lat J. Celmins (same address as applicant). *Passengers and their baggage and express and newspapers in the same vehicle with passengers,* between Rhinelander, WI and Eagle River, WI, serving all intermediate points: From Rhinelander over WI Hwy 17 to Eagle River, and return over the same route, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are five (5) supporting shippers. Their statements may be examined at the office listed below and headquarters. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025. NOTE: Applicant request to tack this authority with authority it presently holds in No. MC–1515 Sub 71.

MC 1824 (Sub-92TA), filed May 21, 1979. Applicant: PRESTON TRUCKING COMPANY, INC., 151 Easton Blvd., Preston, MD 21655. Representative: C. S. Perry (same as above). *Bananas,* from Norfolk, VA to points in the States of CT, DE, GA, IL, IN, IA, KS, KY, MD, MA, ME, MI, MN, MO, NE, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI and DC, for 90 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Robert Rogers, Best Banana Company, 3616 E. Virginia Beach Blvd., Norfolk, VA 23502. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore MD 21201.

MC 1824 (Sub-93TA), filed May 21, 1979. Applicant: PRESTON TRUCKING COMPANY, INC., 151 Easton Blvd., Preston, MD 21655. Representative: C. S. Perry (same as above). *Petroleum and petroleum products, vehicle body sealer and sound deadener compound* (except commodities in bulk) from Congo and St. Marys, WV, Emlenton, Farmers Valley and New Kensington, PA, to points in the States of IL, IN, MD, MI, OH, VA and WI for 90 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): J. D. Campbell, GTM, Quaker State Oil Refining Corporation, P.O. Box 989, Oil City, PA 16301. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore MD 21201.

MC 8535 (Sub-85TA), filed May 16, 1979. Applicant: GEORGE TRANSFER AND RIGGING COMPANY, INCORPORATED, P.O. Box 500, Parkton, MD 21120. Representative: Charles J. McLaughlin (same as above) *Iron and Steel Articles* from the facilities of Armco Inc. located at Butler, PA and Zanesville, OH to IL and IN. (Restricted to traffic originating at the above facilities.) For 90 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Charles W. Hall, Dir. of Transportation, Armco, Inc., Middletown, OH 45043. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore MD 21201.

MC 94265 (Sub-299TA), filed May 14, 1979. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305—Route 460 West, Windsor, VA 23487. Representative: Clyde W. Carver, Attorney, P.O. Box 720434, Atlanta, GA 30342. *Foodstuffs* (except in bulk) in vehicles equipped with mechanical refrigeration, from points in Cobb, Dekalb, Fulton, Clayton, and Gwinnett Countires, GA, to points in the states of KY, MD, NC, OH, PA, TN, VA, WV, and

DC. Restricted to traffic originating at the facilities of Commercial Cold Storage, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Commercial Cold Storage, Inc., 4300 Pleasantdale Road, Atlanta, GA 30340. Send protests to: Paul D. Collins, DS, ICC, Room 10–502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 97244 (Sub-2TA), filed May 17, 1979. Applicant: MASS. TRANSPORTATION, INC., 187 Sidney Street, Cambridge, MA 02139. Representative: Frank J. Weiner, 15 Court Sq., Boston, MA 02108. *Common carrier:* irregular route: *liquid sugar, in bulk,* from Lakeville, NY to Allen Park, MI, for 180 days, an underlying ETA seeks 90 days authority. Supporting shipper(s): Corn Sweeteners, Inc., A Division of Archer-Daniels Midland Co., 24 East Street, Cambridge, MA 02141. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 99234 (Sub-14TA), filed May 14, 1979. Applicant: WESTWAY MOTOR FREIGHT, INC., 5231 Monroe St., Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. *Alcoholic beverages (including wine and brandy) and non-alcoholic beverage mixes)* from points in CA to points in CO and Cheyenne, WY for 180 days. Underlying ETA filed seeking 90 days authority. Supporting shippers: R&L Distributing, 5270 Fox St., Denver, CO 80216; Wholesale Liquor Company, 29 Fordham Circle, Pueblo, CO 81002; Wyoming Liquor Commission, Cheyenne, WY 82002. Send protests to: D/S Roger L. Buchanan, ICC, 721 19th St., 492 U.S. Customs House, Denver, CO 80202.

MC 100785 (Sub-4TA), filed May 15, 1979. Applicant: LAWRENCE E. BULT, d.b.a., L. BULT CARTAGE, 123 North Williams, Thornton, IL 60476. Representative: Robert A. Kriscunas, 1301 Merchants Plaza, Indianapolis, IN 46204. (1) *Ferro alloys,* from Chicago, IL to Wilton, IA and (2) *Steel articles,* from Wilton, IA to Chicago, IL for 180 days. An underlying ETA for 90 days authority was filed. Supporting shipper(s): North Star Steel Co., P.O. Box 749, Wilton, IA 52778. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Rm. 1386, Chicago, IL 60604.

MC 104104 (Sub-19TA), filed May 8, 1979. Applicant: GEORGE A. FETZER, INC., Newton-Sussex Road, Augusta, NJ 07882. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Cleaning compounds,* (except in bulk), and, on return *materials,* and *supplies* used in the manufacturing and sales thereof, (except in bulk) from Port Jervis, NY to points in the US east of the Mississippi River, for 180 days. Supporting shipper(s): Barrier Industries, Inc., Box X, Port Jervis, NY 12771. Send protests to: Joel Morrows, D/S, ICC, 9 Clinton Street, Newark, NJ 07102.

MC 105865 (Sub-3TA), filed May 18, 1979. Applicant: SMART TRUCK LINE, INC., P.O. Box 73, Beattie, KS 66406. Representative: William B. Barker, 641 Harrison, Topeka, KS 66603. (a) *Feed and Feed Ingredients,* from Kansas City and St. Joseph, MO to points in Jewell, Smith, Republic, Washington, Marshall, Nemaha, Brown, Doniphan, Osborne, Mitchell, Cloud, Clay, Riley, Pottawatomie, Jackson, Atchison, Russell, Lincoln, Ottawa, Ellsworth, Saline, Dickinson, Geary, Wabaunsee, Shawnee, Jefferson, Leavenworth, Douglas and Wyandotte Counties, KS; and Franklin, Webster, Nuckolls, Thayer, Jefferson, Gage, Pawnee and Richardson Counties, NE; (b) *Fertilizer and Fertilizer Materials,* from St. Joseph, MO to the destinations listed in part (a) above; (c) *Feed and Feed Ingredients,* from Weeping Water, NE to the KS Counties listed in part (a) above; 180 days, common, irregular; supporting shipper: Farmland Industries, Inc., Kansas City, MO 64116; Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg.; Wichita, KS 67202.

MC 106074 (Sub-111TA), filed April 26, 1979. Applicant: B & P MOTOR LINES, INC., Shiloh Road and U.S. Hwy 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, Attorney, P.O. Box 720434, Atlanta, GA 30328. *Glass containers* from the plant site of Thatcher Glass at Streator, IL to points in NC for 180 days. Supporting shipper(s): Thatcher Glass Manufacturing Co., Division of Dart Industries, Inc., P.O. Box 265, Elmira, NY 14902. Send protests to: Terrell Price, DS, ICC, 800 Briar Creek Rd., Rm. CC516, Charlotte, NC 28205.

MC 106074 (Sub-112TA), filed May 3, 1979. Applicant: B & P MOTOR LINES, INC., Shiloh Road and US Hwy. 221 South, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Materials and supplies used in the manufacture of decorations and ornaments* from points in IL, KY, NJ, OH, PA and TX to Gastonia, NC. Restricted to the transportation of traffic moving to the facilities of Rauch Industries, Inc. at Gastonia, NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Rauch Industries, Inc., P.O. Box 609, Gastonia, NC 28052. Send protests to: Terrell Price, D/S, ICC, 800 Briar Creek Rd.-Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 107295 (Sub-920TA), filed April 27, 1979. Applicant: PRE-FAB TRANSIT CO., P.O. Box 146, Farmer City, IL 61842. Representative: Duane Zehr, P.O. Box 146, Farmer City, IL 61842. *Water screens, intake fabrications, trash rakes, parts and accessories* for the above named commodities from Pearland, TX to points in U.S. except (AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Royce Equipment Company, P.O. Box 34543, Houston, TX 77034. Send protests to: Charles D. Little, D/S, ICC, 414 Lenand Bldg., 527 Capitol Avenue, Springfield, IL 62701.

MC 109064 (Sub 39TA), filed May 1, 1979. Applicant: TEX-O-KAN TRANSPORTATION COMPANY, INC., 3301 E. Loop 820 South, P.O. Box 8367, Fort Worth, TX 76112. Representative: George C. Jackson (same address as applicant). *Iron and steel articles, pipe, tubing, and conduit,* from Washington and Allegheny Counties, PA, to points in TX, OK, LA, AR, and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Tubular Goods, Inc., 1 East Court, Moorestown, NJ 08057. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Fed. Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 109584 (Sub-196TA), filed May 14, 1979. Applicant: ARIZONA-PACIFIC TANK LINES, 3980 Quebec St., P.O. Box 7240, Denver, CO 80207. Representative: Rick Barker (same address as applicant). *Cottonseed oil, crude or refined, in bulk, in tank vehicles,* from Phoenix, AZ to Houston and Bayport, TX for 180 days. Underlying ETA filed seeking 90 days authority. Supporting shipper(s): Anderson-Clayton Co., Inc., P.O. Box 2988, Phoenix, AZ 85062. Send protests to: D/S Roger L. Buchanan, ICC, 492 U.S. Customs House, Denver, CO 80202.

MC 111045 (Sub-168TA), filed April 18, 1979. Applicant: REDWING CARRIERS, INC., 8515 Palm River Road, P.O. Box 426, Tampa, FL 33601. Representative: L. W. Fincher (same address as applicant). Chemicals, in bulk, from Geismar, LA to LeMoyne, AL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Virginia Chemicals, Inc., 3340 West Norfolk Rd., Portsmouth, VA 23703. Send protests to: Donna M. Jones, T/A, ICC, Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.

MC 111045 (Sub-169TA), filed April 20, 1979. Applicant: REDWING CARRIERS, INC., 8515 Palm River Road, P.O. Box 426, Tampa, FL 33601. Representative: L. W. Fincher (same address as applicant). *Pulpmill liquids,* in bulk, in tank vehicles, between plant sites of International Paper Co. at or near Natchez, MS and Mobile, AL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: International Paper Company, P.O. Box 160707, Mobile, AL 36616. Send protests to: Donna M. Jones, T/A, ICC, Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.

MC 111375 (Sub-108TA), filed May 15, 1979. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC., P.O. Box 3358, Madison, WI 53704. Representative: Elaine Conway, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603. *Paper and paper products,* from Brokaw and Mosinee, WI to AZ, CA, ID, MT, NM, NV, OR, UT, WA, and WY for 180 days. Supporting shipper: Wausau Paper Mills Co., Brokaw, WI 54417. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 111375 (Sub-109TA), filed May 18, 1979. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC., P.O. Box 3358, Madison, WI 53704. Representative: Bernard Kompare, Suite 1600, 10 S. LaSalle St., Chicago, IL 60603. *Such commodities as are dealt in or used by grocery, drug and hardware business houses and retail chain stores* (except commodities in bulk), from facilities of Colgate-Palmolive Co., located at or near Berkeley, CA to points in OR & WA, restricted to transportation of traffic originating at the above-named origins, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Colgate-Palmolive Co., 2700 7th St., Berkeley, CA 94710. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 111434 (Sub-100TA), filed May 11, 1979. Applicant: DON WARD, INC., 241 West 56th Avenue, Denver, CO 80216. Representative: Don L. Ward (same address). *Cement,* from Trident, MT to points in WY, for 180 days. An underlying ETA seeks authority for 90 days. Supporting shipper: Ideal Basic Industries, Inc., Cement Division, 950 17th Street, Denver, CO 80202. Send protests to: R. L. Buchanan, D/S, ICC, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 111545 (Sub-281TA), filed May 1, 1979. Applicant: HOME TRANSPORTATION COMPANY, INC., 1425 Franklin Road, S.E., Marietta, GA 30067. Representative: Robert E. Born, P.O. Box 6426, Station A, Marietta, GA 30065. Self-propelled sweepers from Olathe, KS to points in MI, AL, VA, MD, NY, NJ, MA, TX, OH, PA and IN for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Olathe Manufacturing Corp., 100 Industrial Pkwy., Olathe, KS 66061. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 113024 (Sub-160TA), filed April 25, 1979. Applicant: ARLINGTON J. WILLIAMS, INC., 1398 S. DuPont Highway, Smyrna, DE 19977. Representative: Samuel W. Earnshaw, 833 Washington Bldg., Washington, DC 20005. *Contract carrier;* irregular routes: *Clothing, dry goods, drugs, medicines, toilet preparations and articles,* from Dover, DE and Camarillo, CA, to points in the States of AR, CO, NE, NV and UT, under a continuing contract with International Playtex, Inc., Dover, DE, for 90 days. An underlying ETA seeks 90 days. Supporting shipper(s): James M. Harrison, International Playtex, Inc., Box 631, Dover, DE 19901. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, Md. 21201.

MC 113325 (Sub-160TA), filed May 11, 1979. Applicant: SLAY TRANSPORTATION CO., 2001 S. 7th St., St. Louis, MO 63104. Representative: T. M. Tahan (same as applicant). *Chemicals,* in bulk, in tank vehicles from the plant site of Monsanto Co. at or near Chocolate Bayou and Texas City, TX and the Houston, TX commercial zone to all points in the US in and east of LA, AR, MO, IA, and MN, for 180 days. Supporting shipper(s): Monsanto Company, 800 N. Lindberg, St. Louis, MO 63166. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 118865 (Sub-12TA), filed April 9, 1979. Applicant: CEMENT EXPRESS, INC., Hokes Mill Rd. & Lemon St., York, PA 17404. Representative: Jerome Mulroy (same as applicant). *Cement (Portland and Masonry, in bulk or package),* from York, PA to points in FL, GA, and SC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Medusa Cement Company, 2300 W. Market St., York, PA 17404. Send protests to: Peter R. Guman, D/S, 600 Arch St., Rm. 3238, Phila, Pa 19106.

MC 114604 (Sub-74TA), filed May 10, 1979. Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer I, Forest Park, GA 30326. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Rd., NE., Atlanta, GA 30326. *Preserved foodstuffs* (1) between the facilities of National Fruit Products Co., Inc. at Martinsburg, WV, Winchester and Timbersville, VA and Lincolnton, NC and (2) from the facilities of National Fruit Products Co., Inc. at Martinsburg, WV, Winchester and Timbersville, VA and Lincolnton, NC to points in AL, FL, GA, LA, MS, TN, SC and VA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Fruit Products Co., Inc., 550 Fairmont Ave., Winchester, VA 22601. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N. W., Rm. 300, Atlanta, GA 30309.

MC 114725 (Sub-99TA), filed May 9, 1979. Applicant: WYNNE TRANSPORT SERVICE, INC., 2222 North 11th St., Omaha, NE 68110. Representative: Donald F. Swerczek (same address as applicant). *Liquid fertilizer, in bulk, in tank vehicles,* from Audubon, IA to points in NE, KS, and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Great Dane Fertilizer, Inc., Box 86, Audubon, IA 50025. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 115215 (Sub-36TA), filed May 15, 1979. Applicant: NEW TRUCK LINES, INC., P.O. Box 639, Perry, FL 32347. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Sheetrock;* from points in AL to points in FL for 180 days. Supporting shipper(s): Mason Lumber Co., Inc., 915 N. Court St., P.O. Box 1786, Montgomery, AL 36103. Send protests to: G. H. Fauss, DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 115904 (Sub-139TA), filed May 11, 1979. Applicant: GROVER TRUCKING CO., 1710 West Broadway, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Potash,* from Carlsbad, NM to points in ID, OR, UT and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): WMB, 960 E. Green St., Suite 110, Pasadena, CA 91106. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 116004 (Sub-56TA), filed May 22, 1979. Applicant: TEXAS OKLAHOMA EXPRESS, INC., 2222 E. Grauwyler Road, Irving, TX 75061. Representative: Doris Hughes, P.O. Box 47112, Dallas, TX 75247. Common Carrier, regular routes, *General commodities, (except those of unusual value, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk or those requiring special equipment),* serving Muskogee, OK as off-route point in connection with regular route

authority as shown in MC–116004 and applicable subs thereto, for 180 days. Applicant request authority to interline at Dallas, Ft. Worth and Amarillo, TX; Wichita, KS; St. Louis and Kansas City, MO; Oklahoma City and Tulsa, OK and to tack this authority with authority it presently holds in No. MC 116004. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are nine (9) supporting shippers. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 75202.

MC 116004 (Sub-57TA), filed May 22, 1979. Applicant: TEXAS OKLAHOMA EXPRESS, INC., 2222 E. Grauwyler, Irving, TX 75061. Representative: Doris Hughes, P.O. Box 47112, Dallas, TX 75247. Common carrier, regular routes, transport *General Commodities (with usual exceptions)* serving the facilities of P.P.G. Industries at or near Woodward, OK as an off-route point in connection with carrier's otherwise authorized regular route operations, for 180 days. Applicant requests authority to interline at Dallas, Ft. Worth and Amarillo, TX; St. Louis and Kansas City, MO; Tulsa and Oklahoma City, OK; and Wichita, KS and to tack this authority with authority it presently holds in No. MC 116004. An underlying ETA seeks 90 days authority. Supporting shipper(s): PPG Industries, Inc., One Gateway Center, Pittsburgh, PA 15222. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 819 Taylor Street, Room 9A27 Federal Building, Fort Worth, TX 75202.

MC 116254 (Sub-266TA), filed May 15, 1979. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, Florence, AL 35630. Representative: M. D. Miller (same address as applicant). *Aluminum and aluminum articles,* from the facilities of Martin-Marietta Aluminum at Hancock County, KY, to points in AL, AR, CO, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI (Lower Peninsula), MN, MS, MO, NE, NH, NJ, NC, OH, PA, RI, SC, TN, TX, VA, VT, WV, WI, KS OK and the District of Columbia, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Martin-Marietta Aluminum, Inc., 6801 Rockledge Drive, Bethesda, MD 20034. Send protests to: Mabel E. Holston, T/A, ICC, Suite 1616–2121 Building, Birmingham, AL 35203.

MC 116254 (Sub-267TA), filed May 18, 1979. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35630. Representative: Mr. Hampton M. Mills (same address as above). *Iron and steel articles,* from Madison River Terminal, located in Madison, IN, to points in IL, IN, MI, and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Madison River Terminal, 140 Vaughn Drive, Box 253, Madison, IN 47250. Send protests to: Mabel E. Holston, T/A, ICC, Suite 1616–2121 Building, Birmingham, AL 35203.

MC 117815 (Sub-302TA), filed May 15, 1979. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. 20th St., Des Moines, IA 50317. Representative: Daniel O. Hands, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. *Bones* from the facilities of Dubuque Packing Co., Inc. at Denison, IA to the facilities of Swift & Company at St. Joseph, MO for 180 days. Restricted to traffic originating at the named origin and destined to the named destination. An underlying ETA seeks 90 days authority. Supporting shipper(s): Swift & Company, 30 N. LaSalle St., Chicago, IL. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 118535 (Sub-138TA), filed May 8, 1979. Applicant: TIONA TRUCK LINE, INC., 102 West Ohio, Butler, MO 64730. Representative: Tom Ventura, 102 West Ohio, Butler, MO 64730. *Fertilizer materials,* from Walnut Ridge, AR to all points in CO, IA, MO, NE, NM, OK and TX, for 180 days. Supporting shipper(s): Frit Industries, Inc., P.O. Box 850, Ozark, AL 36360. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 118535 (Sub-139TA), filed May 8, 1979. Applicant: TIONA TRUCK LINE, INC., 102 West Ohio, Butler, MO 64730. Representative: Tom Ventura, 102 West Ohio, Butler, MO 64730. *Lead Oxide,* from Terrell, TX to Denver, CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Powerlab Inc., Box 913, Terrell, TX 75160. Send protests to: John V. Barry, DS, ICC, 600 Federal Building, 911 Walnut St., Kansas City, MO 64106.

MC 119345 (Sub-1TA), filed May 14, 1979. Applicant: CARY TRUCKING, INC., Box 265, Downs, KS 67437. Representative: Richard E. Dietz, 118 West Main St., Osborne, KS 67473. *Hides and Packinghouse By-Products,* (1) From Great Bend, KS to MN, WI, and TX; and (2) from Butler, MO to MN, WI, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Cox Hide Company, P.O. 212, Butler, MO 64730. Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., 110 No. Market, Wichita, KS 67202.

MC 119345 (Sub-2TA), filed May 4, 1979. Applicant: CARY TRUCKING, INC., Box 265, Downs, KS 67437. Representative: Richard E. Dietz, 118 West Main Street, Osborne, KS 67473. *Hides, Meat Scraps and Packinghouse By-Products,* (a) From Gibbon, NE; Mankato, Great Bend and Hutchinson, KS to Butler, St. Joseph and Kansas City, MO; (b) From Hutchinson and Mankato, KS to Lincoln and Omaha, NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: Cox Hide Company, 710 West Harrision, Butler, MO 64730. Send Protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., 110 No. Market St., Wichita, KS 67202.

MC 119894 (Sub-13TA), filed May 21, 1979. Applicant: BOWARD TRUCK LINE, INC., 104 Azar Building, Glen Burnie, MD 21061. Representative: G. F. Morgan, Jr., (same as above). *Paper, pulpboard or fibreboard* from Big Island, VA to points in the States of NC and SC, for 180 days. Supporting shipper(s): Lester E. Pierce, Owens-Illinois, Inc., P.O. Box 1035, Toledo, OH 43666. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Building, Baltimore, MD 21201.

MC 123885 (Sub-31TA), filed May 17, 1979. Applicant: C & R TRANSFER CO., P.O. Box 1010, Rapid City, SD 57709. Representative: Floyd E. Archer, P.O. Box 1794, Sioux Falls, SD 57101. *Liquid asphalt and residual fuel* from the plant site of Little America Refining Co. near Evansville, WY to job sites near Danbury, Broken Bow and Lindsay, NE for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): J. L. Healy Construction Co., 38 Riverview Heights, Sioux Falls, SD 57105. Send protests to: J. L. Hammond, DS, ICC, Room 455, Federal Building, Pierre, SD 57501.

MC 124174 (Sub-149TA), filed May 15, 1979. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen (same address as applicant). *Iron and steel decking, flooring or roofing,* from Gloucester City, NJ to Omaha, NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Paxton & Vierling Steel Co., 5 and Avenue H., Carter Lake, IA 68110. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 124774 (Sub-112TA), filed May 10, 1979. Applicant: MIDWEST REFRIGERATED EXPRESS, INC., 4440 Buckingham Avenue, Omaha, NE 68107. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Iron and steel articles,* from Chicago, IL and its commercial zone to Omaha, NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Phillips Manufacturing Co., Inc., 4601 South 76th St., Omaha, NE 68127. Send protests to: Carroll Russell,

ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 126305 (Sub-119TA), filed May 18, 1979. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., Rtd 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladston, NJ 07934. *Railway car wheels, iron or steel, loose or mounted on axles, with or without bearings.* From the facilities of Griffin Wheel Co., Keokuk, IA, on the one hand, and on the other, points in AL, MS, TN, GA, NC, SC, and FL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Griffin Wheel Company, Division of Amsted Industries, Inc., 200 West Monore Street, Chicago, IL 60606. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 128205 (Sub-77TA), filed May 14, 1979. Applicant: BULKMATIC TRANSPORT COMPANY, 12000 South Doty Avenue, Chicago, IL 60628. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Flour,* in bulk, from Winona, Wabasha, New Ulm, New Prague and St. Paul, MN to WI, IA, MO, IL, IN, MI, KY, OH, PA, NY, MA, NJ, WV, VA and MD for 180 days. Supporting shipper(s): Bay State Milling Company, 1776 Heritage Drive, North Quincy, MA 02171. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 133655 (Sub-157TA), filed May 16, 1979. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. *Meat, meat products, and meat by-products, and articles distributed by meat packing houses* as described in Sections A, C, and D of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, (except hides and commodities in bulk) between the facilities of Lauridsen Foods, Inc. located at or near Britt, IA and Armour & Company located at or near Mason City, IA, on the one hand, and, on the other, points in AR, CT, DE, IL, IN, KS, LA, ME, MD, NH, NJ, NY, OH, OK, PA, RI, TX, VT, VA, WV, AND DC, for 180 days. Supporting shipper(s): Armour & Company, Greyhound Tower, Phoenix, AZ 85077. Send protests to: Martha Powell, Transportation Assistant, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133805 (Sub-20TA), filed May 9, 1979. Applicant: LONE STAR CARRIERS, INC., Route 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite 115, Forth Worth, TX 76112. *Meats, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in Description in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank trucks),* from the facilities used by Swift Fresh Meats Company at or near Cactus, TX, to points in AL, CA, CT, DE, FL, GA, IL, IN, KY, MA, MI, MS, ME, MD, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Swift & Company, 115 W. Jackson Boulevard, Chicago, IL 60604. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133805 (Sub-21TA), filed May 9, 1979. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112. *Charcoal briquets, lighter fluid, hickory chips and related barbecue items,* (1) from the facilities used by Husky Industries, Inc. at or near Pachuta, MS, to points in AL, FL, GA, LA, NC, SC, TN, TX, CO, and OK, and (2) from the facilities used by Husky Industries, Inc. at or near Branson, MO, to points in AL, AK, AR, CA, CT, DE, GA, ID, IL, IN, IA, KS, KY, FL, LA, MA, MD, MS, MN, MT, NV, NH, NJ, MI, NY, NC, OH, OR, PA, RI, SC, TN, UT, VA, WV, WA, WI, WY, CO, OK and TX, for 180 days. Supporting Shipper(s): Husky Industries, Inc., 62 Perineter Center East, Atlanta, GA. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133805 (Sub-22TA), filed May 9, 1979. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112. *Promotional materials, china, flatware, cookware, glassware, and related commodities,* between the facilities used by the Easterling Company at or near Des Plaines, IL, on the one hand, and, on the other, point in the U.S. (except AK and HI), for 180 days. Supporting shipper(s): The Easterling Company, 2200 South Mt. Propsect Rd., Des Plaines, IL 60018. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 133805 (Sub-23TA), filed May 9, 1979. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112. *Meat, meat products, meat by-products, and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions of Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk),* from the facilities used by San Antonio Packing, at or near San Antonio, TX, to points in CA, FL, GA, WI, TN, OK, MS, LA, KS, IA, IL, NJ, and NY, restricted to shipment originating at said origin and destined to points in the named destination states, for 180 days. An underlying ETA seeks 90 days authority filed. Supporting shipper(s): San Antonio Packing, 1717 S. Brazos, San Antonio, TX 78207. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 133805 (Sub-24TA), filed May 9, 1979. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112. *(1) Such merchandise as is dealt in by discount and variety stores (except foodstuffs, furniture, and commodities in bulk), and (2) foodstuffs (except in bulk) and furniture, in mixed loads with the commodities in (1) above,* from the facilities of K Mart Corporation at or near Charlotte, NC, to Kansas City, MO and Dallas, TX, for 180 days. An underlying ETA seeks 90 days authority filed. Supporting shipper(s): K Mart Corporation, 3100 W. Big Beaver Road, Troy, MI 48084. Send protests to: Martha A. Powell, T/A, I.C.C., Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 134405(Sub-74TA), filed May 17, 1979. Applicant: BACON TRANSPORT COMPANY, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615–East, The Oil Center, 2601 Northwest Expressway Oklahoma City, OK 73112. *Asphalt,* in bulk, in tank vehicles, from Houston and South Houston, TX, to McCurtain County, OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Riffe Petroleum Co., 111 Philtower Building, Tulsa, OK 74103. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240 Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 134755 (Sub-187TA), filed May 10, 1979. Applicant: CHARTER EXPRESS, INC., 1959 East Turner St., P.O. Box

3772, Springfield, MO 65804. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. *Petroleum and petroleum products in packages,* from Maryland Heights, MO, to points in KS for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pennzoil Company, P.O. Box 808, Oil City, PA 16301. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 136605 (Sub-110TA), filed May 17, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as Applicant). *Cement and cement products* from the facilities of BMD-Sakrete located at or near Denver, CO to points in WY and NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Building Material Distributors, 940 West 3rd Ave., Denver, CO 80223. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 136605 (Sub-111TA), filed May 17, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as Applicant). *Lumber and lumber mill products* from the facilities of Brand S Corporation located at or near Livingston, MT to points in IL, IN, WI, IA, MN, NE, ND, SD, OK and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Brand S Corporation, Airport Road, Corvallis, OR 97330. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 138144 (Sub-51TA), filed May 14, 1979. Applicant: FRED OLSON CO., INC., 6022 W. State St., Milwaukee, WI 53213. Representative: Wm. Brejcha, 10 S. LaSalle St., Chicago, IL 60603. (1) *Insulation board and accessories used in the installation thereof* from facilities of Johns-Manville Sales Corp. at or near Alexandria, IN to points in IL & WI; (2) *Insulation board and accessories used in the installation thereof* from the facilities of Johns-Manville Perlite Corp., at or near Rockdale, IL to MI, OH & to points in WI Counties of Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Door, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Jackson, LaCrosse, Langlade, Lincoln, Marathon, Marinette, Menominee, Monroe, Oconto, Oneida, Pepin, Pierce, Polk, Portage, Price, Rusk, St. Croix, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Washburn & Wood; and (3) *Building materials and cement pipe containing asbestos fiber* from the facilities of Johns-Manville Sales Corp. at or near Waukegan, IL to IN, MO, OH & to points in WI Counties named in (2) above, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Johns-Manville Sales Corp., 2222 Kensington Court, Oak Brook, IL 60521. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 139495 (Sub-445TA), filed April 23, 1979. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. *Petroleum, petroleum products in containers, and advertising matter and commodities used or distributed by retail or wholesale marketers of petroleum products,* from Ponca City, OK to points in WA, OR, CA, NV, ID, MT, WY, UT, CO, AZ, NM, ND, SD, NE, KS, TX, MN, IA, MO, IL, IN, WI; for 180 days, common, irregular; Supporting shipper: Continental Oil Co., Houston, TX; send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS. 67202.

MC 139495 (Sub-448TA), filed May 17, 1979. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Springs, MD 20910. *Meat, meat products, and meat by products and articles distributed by meat packers* (in vehicles equipped with mechanical refrigeration), from Garden City, KS to points in the states of CA, CO, TX, NE, MO, AR, LA, MS, AL, GA, FL, SC, NC, TN, KY, IL, OH, WV, VA, IN, MD, DL, PA, NJ, NY, MA, CT, RI, VT, NH, ME (Restricted to traffic originating at the facilities of Farmland Industries at Garden City, KS and destined to the above states; common, irregular, 180 days. Supporting shipper: Farmland Foods, Inc., Garden City, KS. Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 141145 (Sub-2TA), filed May 7, 1979. Applicant: REYNOLDS & COMPANY, INC., Box 227, No. 1 Railroad Avenue, Waynesboro, GA 30830. Representative: Thomas L. Reynolds, Wood Valley Rd., Waynesboro, GA 30830. *Lumber, forest products, bark, sawdust, wood chips and wood fuel* from the facilities of the Forest Products Division, Kimberly-Clark Corp. at or near Waynesboro, GA to points in NC, SC and TN for 180 days. Supporting shipper(s): Kimberly-Clark Corp., 1414 W. Larsen Road, Neenah, WI 54956. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., NW, Rm. 300, Atlanta, GA 30309.

Note.—Applicant does intend to tack this authority with authority it presently holds in MC–141145.

MC 141245 (Sub-7TA), filed May 17, 1979. Applicant: BARRETT TRUCKING CO., INC., 16 Austin Drive, Burlington, VT 05401. Representative: John A. Barrett (same address as applicant). *Malt beverages,* from the facilities of Miller Brewing Co., Fulton, NY to Barre, VT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wark Bros. Inc., P.O. Box 190, South Barre, VT 05670. Send protests to: ICC, P.O. Box 548, Montpelier, VT 05602.

MC 141245 (Sub-8TA), filed May 1, 1979. Applicant: BARRETT TRUCKING CO., INC., 16 Austin Drive, Burlington, VT 05401. Representative: John A. Barrett (same address as applicant). *Swimming pools* from Fort Wayne, IN to Burlington, VT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pool World, Inc., 16 Austin Drive, Burlington, VT 05401. Send protests to: ICC, P.O. Box 548, Montpelier, VT 05602.

MC 141245 (Sub-9TA), filed May 1, 1979. Applicant: BARRETT TRUCKING CO., INC., 16 Austin Drive, Burlington, VT 05401. Representative: John A. Barrett (same address as applicant). (1) *Flour* from Buffalo, NY to Burlington, VT, (2) *canned goods* from Marion, NY to Burlington, VT, (3) *Wine* from Canandaigua, NY to Burlington, VT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Champlain Valley Fruit Co., Inc., 237 S. Champlain Street, Burlington, VT 05401. Send protests to: ICC,P.O. Box 548, Montpelier, VT 05602.

MC 142484 (Sub-6TA), filed May 15, 1979. Applicant: STRINGFELLOW TRANSPORTATION COMPANY, INC., 724 3rd Avenue, North, Birmingham, AL 35203. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Contract, irregular: *Treated and untreated forest products and lumber mill products and lumber,* between the facilities of Walker Williams Lumber Co., Inc. at Hatchechubbee, AL, on the one hand, and on the other, points in IN, IL, OH, IA, WI, MO, and MI, for 180 days. Supporting shipper(s): Walker Williams Lumber Company, Inc., P.O. Box 170, Hatchechubbee, AL 36858. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616—2121 Building, Birmingham, AL 35203.

MC 142715 (Sub-52TA), filed May 11, 1979. Applicant: LENERTZ, INC., P.O. Box 141, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). *Foodstuffs and confectionery (except commodities in*

*bulk)* from Hershey, PA to points in IA, IL, IN, KS, MO, MN, MI, NE, ND, SD and WI, restricted to traffic originating at the facilities of Hershey Foods Corporation and its subsidiaries and destined to the named states, for 180 days. Supporting shipper(s): Hershey Foods Corporation, 19 East Chocolate Avenue, Hershey, PA 17033. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, South 4th Street, Minneapolis, MN 55401.

MC 142835 (Sub-3TA), filed May 11, 1979. Applicant: CARSON MOTOR LINES, INC., P.O. Box 909, Lakeland, FL 33802. Representative: A. Charles Tell, 100 East Broad St., Columbus, OH 43215. *New furniture*, set up, from the facilities of Thayer Coggin, Inc., at High Point, NC to points in FL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Thayer Coggin, Inc., 427 South Rd., High Point, NC 27262. Send protests to: Donna M. Jones, T/A, ICC, Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.

MC 142905 (Sub-7TA), filed April 2, 1979. Applicant: PETROLEUM TRANSPORTATION CORPORATION, 9717 East 42nd Street, Tulsa, OK 74145. Representative: Thomas N. Willess, 1000 Sixteenth Street, NW., Washington, DC 20036. *Anhydrous ammonia and nitrogen fertilizer solution*, from the facility of Agrico Chemical Co., at or near Williams (Verdigris), OK, to points in AR, KS, TX, and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Phillips Petroleum Company, 154 Phillips Building Annex, Bartlesville, OK 74004. Send protests to: Connie Stanley, TA, ICC, Room 240 Old Post Office and Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 143205 (Sub-4TA), filed May 21, 1979. Applicant: DAVE HAAS, INC., 203 E. Birch St., Thorp, WI 54771. Representative: Wayne Wilson, 150 E. Gilman St., Madison, WI 53703. *Iron and steel articles* from Crawfordsville, IN; Minneapolis, MN; Chicago, IL; and Fort Worth, TX to the facilities of Industrial Fabricators, Inc., at Thorp, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Industrial Fabricators, Inc., Thorp, WI 54771. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 144504 (Sub-1TA), filed May 16, 1979. Applicant: DELTA CHARTER SERVICE, INC., 4900 East Mariposa, Stockton, CA 95206. Representative: Eldon M. Johnson, 650 California Street, Suite 2808, San Francisco, CA 94108. *Passengers and their baggage, in the same vehicle with passengers, in charter operations*, beginning and ending at points in San Joaquin County, CA, and extending to points in Douglas, Storey and Washoe Counties, and Carson City, NV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Nationwide Travel, 5311 Elkhorn Blvd., Sacramento, CA 95842, Cal-Vada Fun Tours, 551 N. Hunter St. No. 10, Stockton, CA 95202, Amer. Legion Post No. 263, 1535 2nd St., Escalon, CA 95320, Wood's Wanderer's, Inc., 4729 N. Pershing Ave., Stockton, CA 95207, and Southwest Police Dept., 22 E. Market St., Stockton, CA 95202. Send protests to: A. J. Rodriguez, DS, ICC, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 145054 (Sub-17TA), filed May 16, 1979. Applicant: COORS TRANSPORTATION COMPANY, 5101 York Street, Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln Street, Denver, CO 80264. *Meat, meat products, and articles distributed by meat packinghouses*, from facilities of Wilson Foods Corp. at Cedar Rapids, Cherokee and Des Moines, IA to all points in the State of CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wilson Foods Corporation, 4545 Lincoln Blvd., Oklahoma City, OK 73105. Send protests to: District Supervisor Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 145425 (Sub-1TA), filed May 9, 1979. Applicant: DAN'S MOVING & STORAGE, INC., 222 Lake Shore Drive West, Dunkirk, NY 14048. Representative: William J. Hirsch, Atty., Suite 1125, 43 Court Street, Buffalo, NY 14202. *Used household goods, unaccompanied baggage and personal effects*, between points in Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming Counties, NY. Restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, and unpacking, uncrating, and decontainerization of such traffic, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Department of the Army, United States Army Legal Services Agency, Nassif Bldg., Falls Church, VA 22041. Send protests to: Richard H. Cattadoris, DS, ICC, 910 Federal Bldg., 111 W. Huron Street, Buffalo, NY 14202.

MC 145595 (Sub-7TA), filed May 7, 1979. Applicant: WARREN G. GORMLEY, dba GORMLEY TRUCKING, 1607 W. Swan, Springfield, Missouri 65807. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Charcoal, charcoal briquets, fireplace logs, wood chips, lighter fluid* and *related products* (except commodities in bulk) from Branson, MO, to AR, LA, MS, IN, TN, IL, OH, TX, OK, KY, NE, IA, WV, VA, PA, CA, CO, KS, UT, and NV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): Husky Industries, 62 Perimeter Center East, Atlanta, GA 30346. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 145614 (Sub-3TA), filed May 22, 1979. Applicant: TRIPLE A TRANSPORT, INC., 193 Main Street, Springvale, ME 04083. Representative: John C. Lightbody, 30 Exchange St., Portland, ME 04101. *Fresh meat* from Commerce City, CO to points in ME and NY, for 180 days. Supporting shipper(s): Gold Star Beef Co., Inc., 4810 Newport St., Commerce City, CO 80022. Send protests to: Donald G. Weiler, District Supervisor, ICC, 76 Pearl St., Rm. 303, Portland, ME 04111.

MC 145765 (Sub-2TA), filed April 3, 1979. Applicant: WIEST TRUCKLINE, INC., 1305 6th Avenue S.W., Jamestown, ND 58401.Representative: Charles E. Johnson, 418 East Rosser Avenue, P.O. Box 1982, Bismarck, ND 58501. *Iron and steel articles*, from Chicago and Granite City, IL, Minneapolis, MN, and Wilton, IA, and points in their commercial zones, to the facilities of Northern Plains Steel, and O'Day Equipment, Inc., at or near Fargo, ND, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s):Northern Plains Steel, P.O. Box 6060, Fargo, ND 58102. O'Day Equipment, Inc., 2500 Main Avenue, Fargo, ND 58102. Send protests to: DS, ICC, Bureau of Operations, Room 268 Fed. Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 146545 (Sub-1TA), filed May 1, 1979. Applicant: DELMAR L. HAUCK, P.O. Box 66, R.D. #2, York, PA 17402. Representative: John M. Musselman, c/o Rhoads, Sinon & Hendershot, P.O. Box 1146, 410 N. 3rd St., Harrisburg, PA 17108. *Truck trailers and cargo containers* between Middletown, PA and points in its commercial zone, and points in CT, DE, MD, NJ, NY, RI, VA, and DC, for 180 days. Supporting shipper(s): Fruehauf Corporation, P.O. Box 238, Detroit, MI 48232. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 146635 (Sub-1TA), filed May 15, 1979. Applicant: CLOVER LEAF LINES, INC., 4031 N. 87th St., Milwaukee, WI

53222. Representative: Daniel Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203. Contract carrier; irregular routes; *Cheese and cheese products* from facilities of Associated Milk Producers, Inc. at Portage and Clair, WI to points in AZ, CA, CO & NM, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Associated Milk Producers, Inc., P.O. Box 455, New Ulm, MN 56073. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 146814 (Sub-2TA), filed May 16, 1979. Applicant: VAN WYK, INC., C Street—Box 433, Sheldon, IA 51201. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. *Meat, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A & C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, except hides and commodities in bulk, in tank vehicles,* from the facilities of John Morrel & Co., Sioux City, IA to points in IL, MI, and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): John Morrell & Co., 208 S. LaSalle St., Chicago, IL 60604. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146845 (Sub-2TA), filed May 8, 1979. Applicant: J. D. RAY COMPANY, 107 Glenwood Drive, P.O. Box 1183, Americus, GA 31709. Representative: Norman J. Bolinger, 1729 Gulf Life Tower, Jacksonville, FL 32207. *Contract carrier,* irregular routes, *particle board, finished and unfinished, and materials, equipment, and supplies used in the manufacture, sale, and distribution of particleboard, finished and unfinished,* between the facilities of Designs of Americus, Inc., at or near Americus, GA, on the one hand, and, on the other points in LA for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Designs of Americus, Inc., Industrial Boulevard, Americus, GA 31709. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 146975 (Sub-1TA), filed April 26, 1979. Applicant: HOWARD KEBLER, 10960 Cutler Road, R #1, Eagle, MI 48822. Representative: Howard Kebler, 10960 Cutler Road, R #1, Eagle, MI 48822. *Brick* from Points in Indiana, OH and IL to the Lower Peninsula of MI. For 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): George P. Anderson Co. P. O. Box 18038, Lansing, MI 48901. SEND PROTESTS TO: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 147074 (Sub-2TA), filed May 8, 1979. Applicant: E Z FREIGHT LINES, Gould & E. 46th St., Bayonne, NJ 07002. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Cigars, snuff and chewing and smoking tobacco.* From Kingston, PA Wheeling, WV and Helmetta, NJ to Charlotte, NC, San Francisco, CA Kingston, PA, Helmetta, NJ and Wheeling, WV, for 180 days. Supporting Shipper(s): General Cigar and Tob. Co., P.O. Box 2000, Dayton, NJ 08810. Send protests to: Robert E. Johnston, D/S, 744 Broad St., Rm 522, Newark, NJ 07102.

MC 147074 (Sub-3TA), filed May 10, 1979. Applicant: E Z FREIGHT LINES, Gould & E. 46th St., Bayonne, NJ 07002. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Wiping cloths, cotton sweepings and cotton piece goods.* Between Dunellen and New Brunswick, NJ on the one hand, and on the other, points in AL, CA, CT, GA, IL, IN, MA, NY, NC, OH, PA, SC, VA, & WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Nu Tex Corp., 130 South 2nd St., Dunellen, NJ 08812. Send protests to: Robert E. Johnston, D/S ICC, 9 Clinton St., Newark, NJ 07102.

By the Commission.

**H. G. Homme, Jr.,**

*Secretary.*

[FR Doc. 79-17709 Filed 6-6-79; 8:45 am]

BILLING CODE 7035-01-M

# Sunshine Act Meetings

Federal Register
Vol. 44, No. 111
Thursday, June 7, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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**[M-226, Amdt. 5; June 4, 1979]**

**CIVIL AERONAUTICS BOARD.**

Addition and closure of item to the June, 1979, meeting agenda.

**TIME AND DATE:** 9:30 a.m., June 5, 1979.

**PLACE:** Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

**SUBJECT:** 29. Pan American's refiled fuel-related fare increases in international markets. (BIA)

**STATUS:** Closed.

**PERSON TO CONTACT:** Phyllis T. Kaylor, the Secretary, (202) 673-5068.

**SUPPLEMENTARY INFORMATION:** Pan American is requesting short notice tariff permission to implement its proposed increases on June 15, 1979. June 5, 1979 is the last day there will be the opportunity for a quorum before the proposed tariff effective date. No earlier notice was possible due to the fact that the proposed was only filed on May 25, 1979 and is still undergoing staff analysis. Accordingly, the following Board Members have voted that agency business requires that the Board meet on this item on less than seven days' notice and that no earlier announcement of the meeting was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

Public disclosure, particularly to foreign governments of opinions, evaluations, and strategies discussed could seriously compromise the ability of the United States Government to achieve understanding in future rate negotiations which would be in the best interests of the United States. Accordingly, we believe that public observation of this meeting would involve matters the premature disclosure of which would be likely to significantly frustrate future action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9) and 14 CFR section 310b.5(9)(B) and that the meeting should be closed:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

**Persons Expected To attend**

Board Members.—Chairman, Marvin S. Cohen; Member, Richard J. O'Melia; Member, Elizabeth E. Bailey; and Member, Gloria Schaffer.
Assistants to Board Members.—Mr. David M. Kirstein, Mr. James L. Deegan, and Mr. Stephen H. Lachter.
Office of the Managing Director.—Mr. Cressworth Lander.
Executive Assistant to Managing Director.—Mr. John R. Hancock.
Office of the General Director.—Mr. Michael E. Levine.
Bureau of International Affairs.—Mr. Sanford Rederer, Mr. Donald Litton, Mr. Douglas Leister, Mr. John Kiser, Mr. Richard M. Loughlin, Mr. Ivars V. Mellups, Mr. Rosario J. Scibilia, Mr. David A. Levitt, Mr. Francis S. Murphy, Mr. Michael Pelcovits, Ms. Mary I. Pett, Mr. James S. Horneman, Mr. John A. Driscoll, Mr. Herbert P. Aswall, and Mr. Mark Kahan.
Office of the General Counsel.—Mr. Philip J. Bakes, Jr., Mr. Gary Edles, Mr. Peter Schwarzkopf, and Mr. Michael Schopf.
Bureau of Domestic Aviation.—Ms. Barbara A. Clark.
Bureau of Consumer Protection.—Mr. Reuben B. Robertson and Ms. Patricia Kennedy.
Office of Economic Analysis.—Mr. Larry Manheim.
Office of the Secretary.—Mrs. Phyllis T. Kaylor, Ms. Deborah A. Lee, and Ms. Louise Patrick.

**General Counsel Certification**

I certify that this meeting may be closed to the public under 5 U.S.C. 522b(c)(9) and 14 CFR section 310b.5(9)(B) and that this meeting may be closed to public observation.

**Philip J. Bakes, Jr.,**
*General Counsel.*

[S-1139-79 Filed 6-5-79; 3:52 pm]
**BILLING CODE 6320-01-M**

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**[M-226, Amdt. 6; June 4, 1979]**

**CIVIL AERONAUTICS BOARD.**

Addition of item to the June 5, 1979, meeting agenda.

**TIME AND DATE:** 9:30 a.m., June 5, 1979.

**PLACE:** Room 1027 (Open), room 1011 (Closed), 1825 Connecticut Avenue NW., Washington, D.C. 10428.

**SUBJECT:** 4b. Docket 32851, IATA Show Cause Proceeding, proposed Order revising procedural dates set forth in Order 79-5-113 and responding to petitions for reconsideration of that Order. (BDA)

**STATUS:** Open.

**PERSON TO CONTACT:** Phyllis T. Kaylor, the Secretary, (202) 673-5068.

**SUPPLEMENTARY INFORMATION:** The Chairman has requested that Item 4b. be placed on the June 5, 1979 calendar for consideration by the Board so that the parties can have the earliest possible notice of a revised schedule in this Docket. Since the next Board meeting will not be held until June 20, 1979 the parties would be substantially prejudiced if they were not informed before that time. Accordingly, the following Members have voted that agency business requires the addition of Item 4b. to the June 5, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1140-79 Filed 6-5-79; 3:52 pm]
**BILLING CODE 6320-01-M**

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**[M-225, Amdt. 1; May 29, 1979]**

**CIVIL AERONAUTICS BOARD.**

**Cancellation of Meeting**

**TIME AND DATE:** 2 p.m., June 5, 1979.

**PLACE:** Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

**SUBJECT:** Aero-America to make a presentation regarding its present and proposed operations.

**STATUS:** Open.

**PERSON TO CONTACT:** Phyllis T. Kaylor, the Secretary, (202) 673-5068.

**SUPPLEMENTARY INFORMATION:** Aero-America is scheduled to make a

presentation to the Board on Tuesday, June 5, 1979. The reason for Aero-America's presentation is its desire to inform the Board and the public about "the carrier's present and proposed operations." Its proposed operations are the subject of formal proceedings which will be promptly scheduled for oral argument. The Board believes that it would be preferable to defer Aero-America's informal presentation until after the Board's decision is reached in the formal proceedings in order to avoid any overlap between the formal cases and the presentation. We regret any inconvenience this deferral may have caused. Accordingly, the following Members have voted that agency business requires the presentation be deferred from the June 5, 1979 agenda and that no earlier announcement of this deferral was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1123-79 Filed 6-5-79; 9:05 am]

BILLING CODE 6320-01-M

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[M-226, Amdt. 1; May 31, 1979]

CIVIL AERONAUTICS BOARD.

Addition of items to the June 5, 1979, meeting agenda.

**TIME AND DATE:** 9:30 a.m., June 5, 1979.

**PLACE:** Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

**SUBJECT:**

4a. Board views on General Accounting Office proposed recommendation of legislation to give the Federal Trade Commission authority over all package tours. (OGC)

27a. Docket 34758, Aerplineas Territorials de Colombia Ltda. "AEROTAL" application for a foreign air carrier permit. (Memo No. 8874, BIA, OGC, BLJ)

**STATUS:** Open.

**PERSON TO CONTACT:** Phyllis T. Kaylor, the Secretary, (202) 673-5068.

**SUPPLEMENTARY INFORMATION:** The General Accounting Office is planning to publish imminently its recommendation of legislation to give the Federal Trade Commission authority over all package tours and needs the Board's views on the proposed recommendation before publication. Item 4a is being added so that the Board's views can be given to the General Accounting Office prior to their publication date. If Item 27a is not considered at the June 5, 1979 meeting, the applicant probably will have to seek additional exemption authority or interrupt its service. Accordingly, the following Members have voted that agency business requires the addition of Items 4a and 27a to the June 5, 1979 agenda and that no earlier announcement was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1124-79 Filed 6-5-79; 9:05 am]

BILLING CODE 6320-01-M

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5

[M-226, Amdt. 2; June 4, 1979]

CIVIL AERONAUTICS BOARD.

Corrected Copy [1]

Addition of item to the June 7, 1979, meeting agenda.

**TIME AND DATE:** 9:30 a.m., June 5, 1979.

**PLACE:** Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

**SUBJECT:** 1a. Nondiscrimination on the basis of handicap in the employment practices of carriers receiving federal financial assistance. (BCP)

**STATUS:** Open.

**PERSON TO CONTACT:** Phyllis T. Kaylor, the Secretary, (202) 673-5068.

**SUPPLEMETARY INFORMATION:** This item was discussed at the May 31, 1979 Board Meeting and the staff is revising the proposed draft. The Board would like to expeditiously consider the draft and submit its comments to HEW. Accordingly, the following Members have voted that agency business requires the addition of Item 1a to the June 5, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-1125-79 Filed 6-5-79; 9:05 am]

BILLING CODE 6320-01-M

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6

[M-226, Amdt. 3; May 31, 1979]

CIVIL AERONAUTICS BOARD.

Addition of item to the June 5, 1979, meeting agenda.

**TIME AND DATE:** 9:30 a.m., June 5, 1979.

**PLACE:** Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

**SUBJECT:** 27b. Wild Card Route Case Instituting Order (To determine selection of carrier and new city gateway for U.S.-London service) (BIA)

**STATUS:** Open.

**PERSON TO CONTACT:** Phyllis T. Kaylor, the Secretary, (202) 673-5068.

**SUPPLEMENTARY INFORMATION:** This item could not meet administratively scheduled deadlines for the June 5, 1979 meeting because of last minute intra-Bureau coordination. It is essential that the Board take action on it immediately so that the prescribed deadline for Board decision date can be met. Accordingly, the following Members have voted that agency business requires the addition of Item 27b to the June 5, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman Marvin S. Cohen
Member Richard J. O'Melia
Member Elizabeth E. Bailey
Member Gloria Schaffer

[S-1126-79 Filed 6-5-79; 9:05 am]

BILLING CODE 6320-01-M

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7

[M-226, Amdt. 4; June 1, 1979]

CIVIL AERONAUTICS BOARD.

Addition of item to the June 5, 1979, meeting agenda.

**TIME AND DATE:** 9:30 a.m., June 5, 1979.

**PLACE:** Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

**SUBJECT:** 6a. Dockets 34826 and 34928, Applications of United Air Lines and Trans World Airlines for exemptions. (OGC)

**STATUS:** Open.

**PERSON TO CONTACT:** Phyllis T. Kaylor, the Secretary, (202) 673-5068.

**SUPPLEMENTARY INFORMATION:** One of the applicants, United Air Lines, wants to begin service on June 8 if it receives approval from the Board. Because of the press of other work, the staff was unable to prepare its memorandum by the regular closing date for the June 5 calendar, and United must know by June 7, 1979 whether or not it will be permitted to operate its flights. Accordingly, the following Members have voted that agency business requires the addition of Item 6a to the June 5, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey

[1] Change in date on line 1 in Supplementary Information.

Member, Gloria Schaffer
[S-1127-79 Filed 6-5-79; 9:05 am]
BILLING CODE 6320-01-M

8

**FEDERAL COMMUNICATIONS COMMISSION.**

**TIME AND DATE:** 9:30 a.m., Thursday, June 7, 1979.

**PLACE:** Room 856, 1919 M Street NW., Washington, D.C.

**STATUS:** Additional item to be considered at Open Commission Meeting.

**MATTER TO BE CONSIDERED:**

*Agenda, Item No., and Subject*

Broadcast—6—Amendment of delegations of authority to Chief of Broadcast Bureau.

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: June 4, 1979.
[S-1130-79 Filed 6-5-79; 10:46 am]
BILLING CODE 6712-01-M

9

**FEDERAL COMMUNICATIONS COMMISSION.**

**TIME AND DATE:** 9:30 a.m., Thursday, June 7, 1979.

**PLACE:** Room 856, 1919 M Street., N.W., Washington, D.C.

**STATUS:** Closed Commission Meeting following the Open Meeting.

**MATTERS TO BE CONSIDERED:**

*Agenda, Item No., and Subject*

Hearing—1—Application for review filed by Lincoln-Douglas Communications and motion for expedited consideration filed by Midwest Broadcasting Company in the Springfield, Illinois FM proceeding (Docket Nos. 21340 and 21341).
Hearing—2—Petitions for reconsideration of a final Commission decision remanded from the Court of Appeals in the Radio Carrollton, Carrollton, Georgia, AM proceedings (Docket Nos. 19636 and 19637).
General—1—Subpoena of FCC records by AT&T in connection with *United States* v. *AT &T, et al.*, Civil Action No. 74-1698 (D.D.C.).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: June 1, 1979.
[S-1131-79 Filed 6-5-79; 10:46 am]
BILLING CODE 6712-01-M

10

**FEDERAL COMMUNICATIONS COMMISSION.**

**TIME AND DATE:** 9:30 a.m., Thursday, June 7, 1979.

**PLACE:** Room 856, 1919 M Street NW., Washington, D.C.

**STATUS:** Open Commission Meeting.

**MATTERS TO BE CONSIDERED:**

*Agenda, Item No., and Subject*

Hearing—1—Petition for review by Review Board of the Supplemental Initial Decision in the WNYC/WCCO consolidated AM broadcast proceeding (Docket Nos. 11227, 17588 and 19403).
Hearing—2—Request that order issued pursuant to delegated authority in the New York, New York-Minneapolis, Minnesota Am proceeding be set aside (Docket Nos. 11227, 17588 and 19403).
Hearing—3—Motion to disqualify counsel in the Columbus, Ohio comparative TV proceeding (BC Docket Nos. 78-395 and 78-396).
Hearing—4—Settlement reimbursement in the Richmond, Virginia (WTVR-TV-AM-FM), renewal proceeding (Docket No. 21409).
General—1—Amendment of Sec. 83.224 of the Rules to exempt certain vessels operating in Vessel Traffic Service (VTS) areas from VHF Channel 16 listening watch requirements (156.800 MHz).
General—2—Allocation of 900 MHz frequencies for the creation of a new Personal Radio Service.
General—3—Biological effects of radio frequencies radiation.
General—4—FOIA request by James Reston, Jr., to inspect records and tapes of amateur Radio transmissions of The People's Temple. FOIA Control No. 9-80.
Private Radio—1—Amendment of Part 87 of the Commission's Rules to provide a frequency for helicopter air-to-air communcations. RM 3293.
Private Radio—2—Expansion of fixed point-to-point operations in the 450-470 MHz bands to include narrow band, multi-channel stations.
Private Radio—3—Petition by ATS Mobile Telephone, Inc. for reconsideration of denial, by delegated authority, of ATS's petition for a Cease and Desist and Show Cause order why General Communications Co., Inc.'s Business Radio license should not be revoked.
Private Radio—4—Amendment of Parts 81 and 83 of the Rules to add San Francisco and Seattle to the designated radio protection areas for Vessel Traffic Services.
Common Carrier—1—American Satellite Corporation's petition to reject RCA American Communications, Inc.'s tariff establishing rates and regulations for new 56 kilobit/sec. service.
Common Carrier—2—Notice of Proposed Rule Making seeking to amend Part 68 to allow connection of customer-provided telephone equipment to private line services without "connecting arrangements".
Assignment and Transfer—1—Applications for consent to the voluntary transfer of control of Starr Broadcasting Group, Inc. to Shamrock Broadcasting Company, Inc.
Assignment and Transfer—2—Applications for consent to voluntary transfer of control of Combined Communications Corp. from John J. Louis, Jr., Karl Eller, et al., to Gannett Co., Inc.; application for consent to voluntary assignment of license of WHEC-TV, Rochester, New York from WHEC, Inc. (a wholly owned subsidiary of Gannett) to BENI Broadcasting of Rochester, Inc.; co-pending request for a tax certificate in connection with WHEC-TV transaction.
Assignment and Transfer—3—Application for consent to voluntary aassignment of license for AM station WCFL, Chicago, Illinois, from Chicago Federation of Labor and Industrial Union Council to WCFL, Inc.
Aural—1—Application by Doubleday Broadcasting Co., Inc. for assignment of call letters KWK-FM to its recently acquired station WGNU-FM, Granite City, Illinois.
Aural—2—Application by Portorican American Company, Inc. for FM broadcast station CP for station WOQI, Ponce, Puerto Rico, and for waiver of Section 73.213(f)(1).
Aural—3—Request for presunrise service filed by radio Akron, Inc., (WHLO), Akron, Ohio.
Television—1—Applications by Spanish International Communications Corp. to construct TV translator stations to serve Hartford, Connecticut; Bakersfield, California; Philadelphia, Pennsylvania; and Denver, Colorado.
Broadcast—1—Television Waveform Standards concerning horizontal and vertical blanking.
Broadcast—2—Broadcast Reregulation Order.
Broadcast—3—Digitally coded program-related material in the video portion of signals.
Broadcast—4—Restructuring of Part 73 of the Rules.
Broadcast—5—Proposed Rule Making on stereophonic broadcasting by AM station (Docket 21313).
Complaints and Compliance—1—Field investigation into the operations of Radio Station WYEN-FM, Des Plaines Illinois.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning the meeting may be obtained from the FCC Public Information Office, telephone number (202) 632-7260.

Issued: June 1, 1979.
[S-1132-79 Filed 6-5-79; 10:46 am]
BILLING CODE 6712-01-M

11

**FEDERAL DEPOSIT INSURANCE CORPORATION.**

**TIME AND DATE:** 2 p.m. on Monday, June 11, 1979.

**PLACE:** Board Room, 6th Floor, FDIC Building, 550–17th Street, NW., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

Disposition of minutes of previous meetings.

Memorandum and resolution proposing the final adoption and publication of amendments to Part 309 of the Corporation's rules and regulations, entitled "Disclosure of Information".

Memorandum proposing the appointment of an agent for service of process in the State of Minnesota.

Resolution expressing the Board's appreciation to Ms. Carmen J. Sullivan for her contributions to the Corporation and to the public while serving as Acting Director of the Office of Consumer Affairs and Civil Rights.

Reports of committees and officers:

Minutes of the actions approved by the committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or request approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Hoyle. L. Robinson, Executive Secretary, (202) 389–4425.

[S–1133–79 Filed 6–5–79; 11:58 am]

BILLING CODE 6714–01–M

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12

**FEDERAL DEPOSIT INSURANCE CORPORATION.**

**TIME AND DATE:** 2:30 p.m. on Monday, June 11, 1979.

**PLACE:** Board Room, 6th Floor, FDIC Building, 550—17th Street NW., Washington, D.C.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Applications for Federal deposit insurance:

The City Bank of San Francisco, a proposed new bank to be located at the northeast corner of Sansome and Pine Streets, San Francisco, California, for Federal deposit insurance.

Louisiana Bank of Ouachita Parish, a proposed new bank to be located at North 7th and West Jackson Streets, West Monroe, Louisiana, for Federal deposit insurance.

Missouri Southern Bank, a proposed new bank to be located at 1319 North Porter Wagoner Boulevard, West Plains, Missouri, for Federal deposit insurance.

Request pursuant to section 19 of the Federal Deposit Insurance Act for consent to service of a person convicted of an offense involving dishonesty or a breach of trust as a director, officer, or employee of an insured bank:

Name of person and of bank authorized to be exempt from disclosure pursuant to the provisions of subsection (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6)).

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. 43,921–L—Franklin National Bank, New York, New York; The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee; American Bank & Trust Company, New York, New York; Farmers Bank of the State of Delaware, Dover, Delaware.

Case No. 43,942–L—Franklin National Bank, New York, New York.

Case No. 43,945–L—Tri-City Bank, Warren, Michigan.

Case No. 43,946–L—Northeast Bank of Houston, Houston, Texas.

Case No: 43,947–L—Franklin National Bank, New York, New York.

Case No. 43,949–L—The Hamilton Bank and Trust Company, Atlanta, Georgia.

Memorandum re: Bank of Woodmoor, Woodmoor (P.O. Monument), Colorado.

Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal proceedings against certain insured banks or officers or directors 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)).

Personnel actions regarding appointments, promotions, adminstrative 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)).

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Hoyle L. Robinson, Executive Secretary, (202) 389–4425

[S–1134–79 Filed 6–5–79; 11:58 am]

BILLING CODE 6714–01–M

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13

**FEDERAL ELECTION COMMISSION.**

**FEDERAL REGISTER NO. FR–S–1108.**

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, June 7, 1979 at 10 a.m.

**CHANGE IN MEETING:** The following item has been added to the open portion of the meeting:

Review of Commission audit policies and procedures.

The following item has been added to the closed portion of the meeting:

Udall 1976 Committee audit report.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred S. Eiland, Public Information Officer, Telephone: 202–523–4065.

**Marjorie W. Emmons,**

*Secretary to the Commission.*

[S–1137–79 Filed 6–5–79; 3:37 pm]

BILLING CODE 6715–01–M

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14

**FEDERAL ELECTION COMMISSION.**

**DATE AND TIME:** Tuesday, June 12, 1979 at 10 a.m.

**PLACE:** 1325 K Street NW., Washington, D.C.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Compliance, Personnel, Udall 1976 Committee Audit Report.

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**DATE AND TIME:** Wednesday, June 13, 1979 at 10 a.m.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Any matters not concluded on June 12, 1979; Udall 1976 Committee Audit Report

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**DATE AND TIME:** Thursday, June 14, 1979 at 10 a.m.

**STATUS:** Portions of this meeting will be open to the public and portions will be closed.

**MATTERS TO BE CONSIDERED:**

Setting of dates for future meetings.

Correction and approval of minutes.

Advisory opinions: AO 1979–22 Evan S. Dobelle, Counsel, Carter-Mondale Presidential Committee, Inc. ("Committee"); AO 1979–26 Charles E. Grassley, U.S. House of Representatives.

Thresholds for review of Presidential Disclosure Reports.

Index Pricing Policy.

Contract proposal on use of sampling techniques for matching fund certification program.

Proposed regulations on the funding and sponsorship of debates.

Commission Program Reviews.

FEC monthly status report on the Presidential public funding process.
Budget Execution report.
Appropriations and budget.
Classification actions.
Routine administrative matters.

Portions closed to the public:
Any matters not included on June 12 and 13.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred S. Eiland, Public Information Officer, Telephone: 202–523–4065.

[S–6715–79 Filed 6–5–79; 3:43 pm]

BILLING CODE 6715–01–M

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15

**INTERNATIONAL TRADE COMMISSION.**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 44 FR 31387 (May 31, 1979).

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10 a.m., Thursday, June 7, 1979.

**CHANGES IN THE MEETING:**

The following item, previously scheduled for the meeting of Thursday, June 7, 1979, has been rescheduled and added to the agenda for the meeting on Tuesday, June 12, 1979:

8. Carbon steel plate from Poland (inv. AA1921–203)—briefing and vote.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 523–0161.

[S–1136–79 Filed 6–5–79; 2:19 pm]

BILLING CODE 7020–02–M

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16

**NATIONAL LABOR RELATIONS BOARD.**

**AGENCY HOLDING THE MEETING:** National Labor Relations Board.

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 44 FR 30192, published May 24, 1979.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 10 a.m., Monday, June 4, 1979.

**CHANGES IN THE MEETING:**

1. The time and date of the meeting has been changed to: 9 a.m., Tuesday, June 12, 1979.
2. Matters to be considered has been changed to read: Personnel matters pertaining to Senior Executive Service.

Dated: Washington, D.C., June 5, 1979.

By direction of the Board.

**George A. Leet,**

*Associate Executive Secretary, National Labor Relations Board.*

[S–1141–79 Filed 6–5–79; 3:52 pm]

BILLING CODE 7545–01–M

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17

**NATIONAL TRANSPORTATION SAFETY BOARD.**

**TIME AND DATE:** 9 a.m., Thursday, June 14, 1979. [NM–79–19]

**PLACE:** NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. *Marine Accident Report*—Grounding and capsizing of clam digger PATTI–B at Ocean City, Md., May 9, 1978.
2. *Marine Accident Report*—Sinking of the offshore supply vessel M/V SABINE SEAHORSE in the Gulf of Mexico, January 31, 1978.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Flemming, 202–472–6022.

June 5, 1979.

[S–1142–79 Filed 6–5–79; 4:06 pm]

BILLING CODE 4910–58–M

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18

**NUCLEAR REGULATORY COMMISSION.**

**TIME AND DATE:** June 2, 4, 5 and 7, 1979.

**PLACE:** Commissioners' Conference Room, 1717 H St., N.W., Washington, D.C.

**STATUS:** Open/Closed (Changes).

**MATTERS TO BE CONSIDERED:**

**Saturday, June 2, 5 p.m.**

Discussion of Personnel Matter (Approximately 30 minutes—Closed—Ex 6)

**Monday, June 4, 1:30 p.m.**

The "Discussion of Personnel Matter" (Approximately 1½ hours—Closed—Ex 6) is Postponed to Tuesday, June 5 at 10:30 a.m.

**Tuesday, June 5, 10:30 a.m.**

The "Second Periodic Review of NRC Fiscal Year 1979 Operating Budget and Decision Unit Tracking" (Approximately 1½ hours—Public meeting) is Postponed to Thursday, June 7 at 9:30 a.m.

**CONTACT PERSON FOR MORE INFORMATION:** Walter Magee, 202–634–1410.

Dated: June 4, 1979

**Roger M. Tweed,**

*Office of the Secretary.*

[S–1135–79 Filed 6–5–79; 1:04 pm]

BILLING CODE 7590–01–M

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19

**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 44 FR 28925—May 17, 1979.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 1 p.m. on June 7, 1979.

**CHANGES IN THE MEETING:** This meeting has been canceled and will be rescheduled at a later date to be announced.

Dated: June 4, 1979.

[S–1128–79 Filed 6–5–79 9:05 am]

BILLING CODE 7600–01–M

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20

**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.**

**TIME AND DATE:** 10 a.m. on June 12, 1979.

**PLACE:** Fourth Floor Courtroom, U.S. Court of Customs and Patent Appeals, 717 Madison Place, N.W., Washington, D.C.

**STATUS:** Open meeting.

**MATTERS TO BE CONSIDERED:** The Commissioners will hear and consider oral argument from the parties in the matter of *Secretary of Labor* v. *New England Telephone & Telegraph Company*, OSHRC Docket No. 76–3010.

**CONTACT PERSON FOR MORE INFORMATION:** Ms. Particia Bausell, (202) 634–4015.

Dated: June 4, 1979.

[S–1129–79 Filed 6–5–79; 9:05 am]

BILLING CODE 7600–01–M

federal register

Thursday
June 7, 1979

Part II

# Environmental Protection Agency

## National Pollutant Discharge Elimination System; Revision of Regulations

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 6, 115, 121, 122, 123, 124, 125, 402, and 403

[FRL 1201-2]

### National Pollutant Discharge Elimination System; Revision of Regulations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule extensively revises the existing regulations governing the National Pollutant Discharge Elimination System (NPDES) program for three purposes:

(1) To clarify and improve existing program regulations and procedures in light of past experience;

(2) To fill significant gaps in coverage under the existing regulations, particularly in response to court decisions and the emerging emphasis on the control of toxic and hazardous pollutants; and

(3) To make the regulatory changes which are necessary under the 1977 amendments to the Clean Water Act.

**DATES:** These regulations will be considered issued for purposes of judicial review at 1:00 p.m. eastern time on June 14, 1979. If such date is a Federal holiday, the issuance date will be considered to be 1:00 p.m. eastern time on the next day after the seventh day which is not a Federal holiday. Parts 121, 122, 123, 125 and 403 of this regulation shall be effective August 13, 1979. Part 124 is effective as provided in § 124.135. In order to assist EPA to correct typographical errors, incorrect cross-references, and similar technical errors, comments of a technical and nonsubstantive nature on this final regulation may be submitted not later than August 13, 1979. However, the effective dates will not be delayed by consideration of such comments.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Kramer (EN-336), Office of Water Enforcement, Environmental Protection Agency, Washington, DC 20460 (202-755-0750).

**SUPPLEMENTARY INFORMATION:**

#### Background

The Federal Water Pollution Control Act Amendments of 1972 established the National Pollutant Discharge Elimination System (NPDES) permit program. Shortly after, in December 1972 and May 1973, EPA promulgated regulations outling the NPDES program in two Parts. 40 CFR Part 124 established substantive requirements for approved State NPDES programs, while Part 125 established the similar requirements of the EPA permit program. These two Parts, revised several times, are the existing NPDES regulations which remain in force until the effective date of these regulations published today.

In 1977, a new phase of the NPDES program began, prompted by several developments. First, five years of experience with dischargers, approved NPDES States, and the courts had been gained. Second, the "first round" of NPDES permits, issued for a term of five years, were beginning to expire. Third, a major statutory deadline (July 1, 1977) had passed, and the 1983 deadline for achievement of more stringent treatment requirements became the new program goal, along with an increased emphasis on the control of toxic and hazardous pollutants. In late 1977, Congress enacted the Clean Water Act of 1977, making several significant changes in the scope and direction of the NPDES program. These changes include: revisions of the 1983 treatment requirements for industrial dischargers; extensions of the 1977 treatment deadline for certain municipal and industrial dischargers; provisions for certain variances from technology-based treatment requirements; recognition of the Consent Decree in *NRDC* v. *Train*, 8 ERC 2120 (D.D.C. 1976); requirements for best management practices in certain industrial permits; provision for control of sewage sludge disposal in NPDES permits; provision for EPA to issue permits if it objects to a State NPDES permit; and authorization of State assumption of the permit programs under sections 318, 404, and 405.

In addition to the need for regulatory revisions to address these major developments, the former regulations had to be amended and reorganized because they had become unwieldy. On one hand, much needless duplication of the basic substantive and procedural requirements between the former State and Federal NPDES program regulations can be eliminated. Under the regulations published today, the basic substantive and procedural requirements applicable to all permits are set forth in Parts 122 and 124. Part 123, which establishes State Permit Program Requirements, cross-references provisions from those Parts which are applicable to State programs. EPA believes that this new structure will help to simplify the regulations for use by permittees, the States, and the public, and will avoid inconsistencies between State and Federal programs.

Parts of the former NPDES regulations were either too terse to provide meaningful guidance or left significant permit-related issues unaddressed. For example, in many situations the former regulations governing adjudicatory hearings provided inadequate assistance or direction to Presiding Officers or the parties. Based upon several years of experience accumulated by EPA in conducting these hearings, the regulations published today for Part 124 provide more detailed procedures better tailored to result in responsible, informed permit issuance decisions. Similarly, and for the same purpose, the regulations published today for Parts 122 and 125 provide guidance on substantive questions formerly unaddressed in regulations.

Accordingly, five new Parts of Title 40, incorporating all of existing Parts 115, 122, 123, 124, 125 and 402, as well as portions of § 6.900, are established as follows:

- **PART 121—STATE CERTIFICATION OF ACTIVITIES REQUIRING A FEDERAL LICENSE OR PERMIT**
- **PART 122—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**
- **PART 123—STATE PERMIT PROGRAM REQUIREMENTS**
- **PART 124—PROCEDURES FOR DECISIONMAKING REGARDING NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS**
- **PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

A "Guide to the NPDES Regulations" which describes the regulations has been prepared and is available by writing the Environmental Protection Agency, Public Information Center (PM-215), 401 M Street, S.W., Washington, D.C. 20460.

These regulations were proposed on August 21, 1978, (43 FR 37078). Originally, the comment period on the proposed regulations was to have ended on October 20, 1978. However, based on many requests from the public, the comment period was extended to November 20, 1978 (43 FR 47213, October 13, 1978). During the comment period, two public meetings were held: one in Washington, D.C. and one in San Francisco. Over 100 people attended each meeting and over 500 letters were

submitted containing thousands of comments. Comments were catalogued and summarized for each section of the proposal. These final regulations revise the proposed regulations based on comments received. A summary of comments received and the bases for revisions are discussed later in this preamble.

In addition to the August 21, 1978 proposal, EPA published other regulations governing specific portions of the NPDES program. These regulations were promulgated separately from the August 21, 1978 core package because of statutory deadlines for application by permittees for certain extensions and modifications or because of other pressing needs. The following table summarizes all regulations recently published by EPA concerning the NPDES program. Except as noted in the table, these separately published regulations have been incorporated into this final rule.

Table I

| Federal Register Date | Summary of regulation | Status of regulations as of last publication | Comments |
|---|---|---|---|
| Feb. 4, 1977 (42 FR 6846) | *General Permit Program.* Proposed establishment of a new general program covering point source discharges. | Proposed Rule. | Incorporated in final rule, primarily at § 122.48. |
| Apr. 25, 1978 (43 FR 17484) | *301(h) Modifications.* Proposed establishment of criteria, standards and procedures for granting 301(h) permit modifications to the secondary treatment requirements for certain ocean discharges. | Proposed Rule. | Procedures incorporated into Part 124, Subpart G, of Part 125 reserved for standards and criteria. |
| May 16, 1978 (43 FR 21266) | *301(i) Extensions.* Establishes criteria for granting extensions for compliance with 1977 statutory deadline for municipal treatment requirements and industries planning to connect to these treatment systems and a method for incorporating these extensions in the NPDES program. | Interim Final Rule. | Incorporated in final rule as Subpart J of Part 125. |
| May 23, 1978 (43 FR 22160) | *Veto/Modification.* Revised Parts 124 and 125 of EPA regulations to clarify the procedures and criteria which EPA will use in exercising its authority to object to (veto) the issuance of State NPDES permits and to require modification of permits to incorporate BAT/Toxic requirements in accordance with NRDC Consent Decree of June 8, 1976. | Final Rule | Veto regulations incorporated in final rule at § 123.23. Modification regulations incorporated in final rule at § 122.15(b). |
| June 26, 1978 (43 FR 27736) | *Pretreatment.* Pretreatment regulations to control the introduction of non-domestic wastes into municipal treatment plants. | Final Rule | Technical conforming amendments made by this final rule. |
| Aug. 21, 1978 (43 FR 37078) | *NPDES Regulations* Proposed revision to the NPDES regulations | Proposed Rule. | Incorporated in final rule as Parts 122, 123, 124, and 125. |
| Sept. 1, 1978 (43 FR 39282) | *Best Management Practices.* Proposed establishment of new controls on toxic and hazardous pollutants by imposing in NPDES permits Best Management Practices for ancillary industrial activities. | Proposed Rule. | Incorporated, in part, in Part 125, Subpart K. |
| Sept. 1, 1978 (43 FR 39278) | *Spill Prevention Control and Countermeasures (SPCC).* Requirements for SPCC Plans to prevent discharges of hazardous substances from facilities subject to NPDES permits. | Proposed Rule. | Not part of final rule. |
| Sept. 13, 1978 (43 FR 40859) | *Best Available Technology (BAT) Modifications.* Establishes requirements for application for modifications of BAT non-conventionals under 301(c) and/or 301(g). | Interim Final Rule. | Incorporated in final rule at § 124.51(b). |
| Dec. 11, 1978 (43 FR 58066) | *Second Round Permits.* Established strategy to ensure NPDES permit will reflect 1983 treatment requirements by issuing short-term permits set to expire 18 months after the scheduled date of promulgation of BAT guidelines for industries affected by the NRDC Consent Decree. | Final Rule | Incorporated in final rule at § 122.12(c) and § 122.15(b). |

The incorporated regulations have been renumbered to conform with the codification of this final rule. Any additional changes (i.e., based on public comments) are discussed later in this preamble.

These final NPDES regulations set the framework for EPA's consolidated permit regulations, which will soon be proposed in the **Federal Register.** The proposed consolidated permit regulations will cover the NPDES and section 404 (discharge of dredged or fill material) programs under the Clean Water Act, the hazardous waste management program under the Resource Conservation and Recovery Act, and the underground injection control program under the Safe Drinking Water Act. When promulgated, the consolidated regulations will occupy Parts 122–124 of Title 40 of the Code of Federal Regulations. The final NPDES regulations will be incorporated into the proposed consolidated regulations without significant change. The Preamble to the consolidated regulations will highlight the changes made during the process of program consolidation that affect the NPDES program, and will invite comments on the proposed changes. The final NPDES regulations will remain effective until the consolidated regulations are published in final form.

### Judicial Review of the Regulations

The issue has arisen as to where and when judicial review will be available on these regulations. For the benefit of those who might be affected by these regulations, and to avoid, if possible, premature attempts to seek review for protective reasons based on concern that EPA will oppose review when it is proper, a brief outline of the Agency's views on reviewability of these regulations follows.

Judicial review of most regulatory actions under the Clean Water Act is available under section 509(b). That section identifies specific actions which are reviewable in the Courts of Appeals. Judicial review of two permit-related actions is available under section 509(b): "issuing or denying any permit" (section 509(b)(1)(F)) and "making any determination as to a State permit program" (section 509(b)(1)(D)). However, review is not provided for actions in issuing general regulations governing the issuance of NPDES permits. NPDES regulations have been in force since 1973, and no court has held that they are independently reviewable. They have, however, been reviewed in the context of individual permit issuance actions, for which review in the Courts of Appeals is explicitly provided. See, e.g., *Marathon Oil Company* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977), *Seacoast Anti-Pollution League* v. *Costle*, 572 F.2d 872 (1st Cir. 1978).

The alternative to direct review of NPDES regulations under section 509(b) has been rejected by the Court of

Appeals for the Third Circuit. In *American Iron and Steel Institute* v. *EPA (AISI II)*, 543 F.2d 521 (3rd Cir. 1976), the court held that "net/gross" provisions of NPDES regulations (which currently appear, in amended form, as § 122.16 (f) and (g) of these regulations) are not reviewable in the abstract, but become reviewable either in the context of individual effluent limitations guidelines or NPDES permit issuance. *AISI II* at 528.

EPA agrees with the Court's analysis in *AISI II*. Today's regulations will be reviewable when NPDES permits are issued. A very few, such as net/gross provisions, may also become reviewable when effluent limitations guidelines are promulgated. None are reviewable now in the Courts of Appeals.

There remains a question not addressed by the *AISI II* decision: Is review of these regulations available in District Courts? EPA believes that District Court review is not available now. Two of the reasons cited in *AISI II* for the unavailability of Court of Appeals review similarly militate against District Court review: The absence of a factual context to focus review, and the absence of a concrete record to aid the reviewing court; *AISI II* at 528. Moreover, the absence of immediate effect on the discharger and other parties points persuasively to a conclusion that today's regulations are not ripe for review in either the District Courts or the Courts of Appeals. As the Supreme Court stated in *Toilet Goods Ass'n.* v. *Gardner*, 387 U.S. 158, 165 (1967) the challenged regulations:

> would at most lead only to . . . a determination that can then be promptly challenged through an administrative procedure, which in turn is reviewable by a court. Such review will provide an adequate forum for testing the regulation in a concrete situation. [Footnotes omitted.]

EPA believes, for the same reasons, that the NPDES regulations should be reviewed in the concrete context of permit issuance proceedings. See *Diamond Shamrock Corp.* v. *Costle*, 580 F. 2d 670 (D.C. Cir. 1978).

**Issuance Date of the Regulations**

EPA further wishes to point out that the NPDES regulations will not be considered issued for the purpose of judicial review (if available at this time) until 1:00 p.m. eastern time, 7 days after publication in the **Federal Register** (June 14, 1979). EPA published notice of this intent to have a delayed issuance date on May 1, 1979, 44 FR 25475. The regulations will not become effective until 60 days from that issuance date (August 13, 1979) except for Part 124 which will be 120 days (October 12, 1979). In addition, due to the length of NPDES regulations and the number of cross-references, EPA will accept nonsubstantitive comments (e.g., typographical errors, incorrect cross-references, missing lines, etc.) during this same 60-day period. This nonsubstantive comment period will not affect the effective date of the NPDES regulations.

**Overview of These Regulations**

*I. Part 121—State Certification of Activities Requiring a Federal License or Permit*

A. *What Does This Part Do?* Part 121 contains State certification procedures and requirements applicable to all Federal Licenses and permits other than NPDES.

B. *How Does This Part Relate to Existing Regulations?* The existing State certification regulations predate the Federal Water Pollution Control Act Amendments of 1972 and have never been updated. However, because of the impact of State certification of non-NPDES permits on a myriad of Federal programs, it will be necessary to consult with the affected agencies in some detail before changes are made. State certification of Federal licenses or permits other than NPDES will continue unchanged. This Part merely redesignates the existing regulations, formerly 40 CFR 123, as Part 121. State Certification of NPDES permits is discussed in the overview of Part 124.

C. *How Does This Part Relate to the August 21, 1978 Proposed Regulations?* The August 21, 1978 proposal inadvertently deleted existing State certification regulations. This deletion was noted in a comment from the public. In response to the comment, this Part has been retained.

*II. Part 122—National Pollutant Discharge Elimination System*

A. *What Does This Part Do?* Proposed Part 122 establishes the basic "program definition" of the NPDES, whether administered by EPA or an approved State. This Part covers the full range of substantive program requirements, spelling out in detail: who must apply for a permit; how a permit is issued; what terms, conditions, and schedules of compliance must be incorporated into permits; when and how monitoring and reporting of permit compliance must be performed; when permits may be revised or reissued; and what special requirements apply to certain types of dischargers.

B. *How Does This Part Relate To Existing Regulations?* The former regulations contain separate NPDES program requirements for approved States (40 CFR Part 124) and for EPA (40 CFR Part 125). The majority of provisions under former Parts 124 and 125 are duplicative. To eliminate this duplication, the NPDES program requirements applicable to both EPA and approved States have now been consolidated into one set of regulations in Part 122. The process for approval of a State program to administer the NPDES is in a separate Part (see Part 123 below), which cross-references the applicable substantive requirements of Part 122.

Part 122 regulations reflect significant developments which have occurred since the NPDES program began. Furthermore, provisions of the former regulations have been reorganized and rewritten. New regulations have been included where the former regulations do not adequately address the requirements of the Act (i.e., where court decisions have altered aspects of the NPDES program, where EPA guidance for administration of the NPDES program was not previously incorporated into regulations, and where experience in administering the program has highlighted gaps in effective implementation of the Act). Finally, certain revisions have been made to conform the NPDES program to provisions of the 1977 amendments to the Clean Water Act.

C. *How Does This Part Relate to the August 21, 1978 Proposed Regulations?* The following is a discussion of the significant comments received and the basis for revisions made to Part 122 of the proposed regulations. Minor editorial changes have been made in all sections.

*§ 122.3 Definitions.*

*§ 122.3(f) Definition of "best management practices".*

Many commenters indicated confusion as to the relationship between best management practices mandated under section 304(e) of the Act and best management practices which might be required under other authorities (e.g., through section 401 State certification; pursuant to section 208(e) for water quality management plan requirements; where effluent limitations are inappropriate or infeasible to control plant source discharges in accordance with *NRDC* v. *Costle* (Runoff Point Sources) 568 F.2d 1369 (D.C. Cir. 1977)). To clarify this point, it should be noted that the definition of best management

practices in paragraph (f), while adapted from section 304(e) language and legislative history, applies to uses of the term "under any or all authorities." Thus, the term has been used to reflect section 304(e) as well as requirements imposed under section 402(a)(1) in accordance with the Runoff Point Sources decision in *NRDC* v. *Costle*.

Several commenters also noted that the legislative history of section 304(e) specifically excludes actual plant process design and related operating decisions from the definition of best management practices. EPA agrees, and has revised the definition to include this limitation authority under section 304(e).

*§ 122.3(k) (proposed § 122.3(j)) Definition of "discharge of a pollutant".*

Many commenters disagreed with one or more of the types of activities included within the definition of a "discharge of a pollutant" in proposed paragraph (j). In response, the following revisions and clarifications have been incorporated into the final regulations.

First, the regulations have been clarified to indicate that a discharge to a pipe is not, in and of itself, a discharge of pollutants subject to the permit program. A discharge to a pipe must ultimately reach navigable waters in order to fall within the purview of the NPDES requirements.

Second, a number of comments questioned the statutory authority for the requirement in the proposed § 122.3(j) that classified a discharge through a State or municipally owned treatment system as a direct discharge, if that treatment system was not designed and constructed to meet the "applicable requirements of section 301(b) of the Act." These commenters argued that this provision placed an undue burden on industrial users of State/municipal treatment systems and that this method of control was beyond authority granted EPA by the Act.

EPA has changed this requirement in response to these comments, although the Agency believes that the proposed regulations were within its authority. This provision in revised § 122.3(k) now defines as a "discharge of a pollutant" only those discharges into pipes which do not lead to a treatment system, but rather into waters of the United States.

On the other hand, a discharger discharging into a storm sewer or other publicly owned conveyance which does not lead to a publicly owned treatment works, but directly to navigable waters, is clearly subject to the permit requirement. See *United States* v. *Granite State Packing Co.*, 343 F. Supp. 57 (D.N.H. 1972), *aff'd.*, 470 F.2d 303 (1st Cir. 1972). The final regulations continue to reflect this requirement.

Third, the provision in the proposed definition of "discharge of pollutant," which stated that discharges through State or municipal systems handling primarily industrial wastes be considered direct discharges has been deleted in response to comments. Many commenters considered the proposed approach to be unwieldly and inconsistent with the language of the Act regarding publicly owned treatment works (POTWs). This provision was intended to allow a more equitable control of compatible wastes (biochemical oxygen demand (BOD) and suspended solids (SS)) which are discharged into POTWs by industries (incompatible industrial wastes are controlled through the pretreatment regulations, 40 CFR Part 403). At present, POTWs are required by the Act to achieve, at a minimum, the effluent quality attainable through the application of secondary treatment. The secondary treatment information regulation (40 CFR Part 133) controls concentration and percent removal of BOD and SS, pollutant parameters normally associated with domestic wastes. However, many POTWs receive and treat large amounts of industrial waste. The secondary treatment information regulation does not completely address compatible industrial waste; 40 CFR § 133.103(b) only allows an upward adjustment of the concentration limits where the effluent limitation guidelines, which would be applicable to the industry if it were a direct discharger, are *less* stringent than secondary treatment. 40 CFR 133 does not allow for *more* stringent concentration limits where industrial effluent limitations guidelines are more stringent. Nor does the secondary treatment regulation allow for any adjustment of the 85% removal requirement. The proposed provision would have allowed EPA to address these two areas and we continue to believe that it is supportable under the Act. However, we do agree with those commenters who said that such a provision would be very unwieldly and would make permit writing under these circumstances a very difficult task. Therefore, we have deleted this provision and intend to deal with these issues by revising the definition of secondary treatment or alternatively, covering these areas in a revision to the definition of best practicable waste treatment technology.

Further, a number of commenters objected to the provision which included discharges through pipes, sewers or other conveyances owned by third parties other than a State or municipality as direct discharges. These commenters argued that such discharges, at a minimum, should be considered to be discharges through treatment systems. In addition, many commenters questioned the statutory authority and practicability of such a provision.

EPA has revised this provision to indicate that discharges through privately owned treatment systems are direct discharges. Moreover, EPA continues to believe that adequate authority exists for such a provision. This provision reflects EPA's interpretation of the Act in the Decision of the General Counsel No. 43 (Friendwood Development Company). Nevertheless, EPA does not intend for this requirement to result in many permits for a single discharge point. To avoid the administrative problems caused by multiple permits, EPA recommends the issuance of a single permit to all users as well as the control or treatment facility, with all parties listed as permittees and with joint and several liability for obligations under the permit.

Finally, a number of commenters argued that the inclusion of surface runoff channelized into point sources in the proposed definition of "discharge of a pollutant" was overreaching in light of the statutory exclusion of irrigation return flows. Many commenters also argued that the definition was confusing when read in conjunction with proposed § 122.4 (Exclusions), § 122.45 (Separate storm sewers), and § 122.46 (Silvicultural activities). This definition has not been changed. The concerns of the commenters have been addressed through revisions to § 122.4, § 122.45, and § 122.46. For further details see discussion on these sections later in this preamble.

*§ 122.3(1) (proposed § 122.3(K)) Definition of "discharge monitoring report".*

A number of comments were received on the proposed definition of "discharge monitoring report." Some argued that the definition should allow more flexibility to States in development of a form for reporting of self-monitoring results by permittees. Other commenters argued that EPA standard national forms for Discharge Monitoring Reports should be used both by EPA and by approved States. EPA was persuaded by the latter arguments and has changed the definition to require the use of standard national forms by both EPA and approved NPDES States. This will

facilitate the use of computer systems designed to directly read and analyze the reported information. It will also increase the ability of all program offices within EPA to share such information. EPA will provide the States with preprinted standard forms (States may substitute their name, logo, etc. on these forms) and will also provide necessary computer software.

*§ 122.3(t) (Proposed § 122.3(s)) Definition of "navigable waters".*

The definition of "navigable waters" has been slightly revised to clarify its intent and scope, but the basic thrust and coverage remain the same as in the proposed rules.

Some commenters suggested that EPA exclude certain types of impoundments of navigable waters from the definition, such as holding ponds, cooling ponds, and closed cycle lagoons. Under some circumstances, it is appropriate to impound navigable streams in order to create a cooling pond or lake. EPA does not mean to prohibit this practice and applicable regulations specifically recognize this use and specify where it is allowable to comply with technology-based regulations. For example, in 40 CFR § 423.11 (m) and (n), the terms "cooling pond" and "cooling lake" are distinguished. A "cooling pond" may under some circumstances be navigable waters, but usually is not. A "cooling lake" is always a navigable water. Yet in either case affluent guidelines explicitly recognize some circumstances in which it is appropriate to use such impoundments for treatment. (Compare 40 CFR § 423.13(1)(3) with 40 CFR § 423.15(1)(2)). These are exceptional cases, however. In general, the Act's requirements must be met at the point of discharge into navigable waters.

Some commenters suggested that waste treatment systems be excluded from the definition of navigable waters. EPA disagrees with this comment where cooling ponds are involved. Such ponds are frequently extremely large in size and some harbor fish populations which invite recreational uses. If such ponds are opened for recreational use, recreational users of the previously non-navigable waters could be exposed to potentially harmful effects where, for example, fish are contaminated and consumed by such users. EPA believes this use should remain subject to control under the Act's regulatory provisions, and that such broad jurisdiction is consistent with the thrust of the Act and its legislative history.

*Use by industries in interstate commerce.* Some controversy has centered around the question of what waters are defined as "waters of the United States" because of use by industries in interstate commerce for industrial purposes. The Decision of the General Counsel No. 73 concluded that the definition in the previous regulations required actual use by an industrial user downstream from the discharger. Since there were no users downstream from the discharging industry, the stream in question was found not to be waters of the United States. The opinion explicitly stated, however, that it was based upon the regulations, not the Act, and left open the question whether EPA was free to adopt a broader definition tied to the susceptibility of the stream of use by industries in interstate commerce.

These regulations are intended to broaden the definition of waters of the United States in the manner suggested by Decision No. 73. Waters will be considered to be waters of the United States not only if they are actually used, but also if they may be susceptible to use, for industrial purposes by industries in interstate commerce. Thus the regulations now focus, not on the nature of the stream's users, but on the characteristics of the stream itself, and it will no longer be necessary to show actual industrial use for a stream to fall within the definition.

On the other hand, except for cooling ponds which meet the criteria for "waters of the United States" (such as, for example, those which are used for fishing or other recreational purposes by interstate travelers), EPA agrees with a frequently encountered comment that waste treatment lagoons or other waste treatment systems should not be considered waters of the United States. Accordingly, the definition has been revised to exclude such treatment systems.

Moreover, if any portion of a stream is used or susceptible to use by industries in commerce, the entire stream is waters of the United States. As an example, assume that three industries in interstate commerce (A, B and C), lie along a stream which flows into a small lake contained entirely on the property of Industry C, and from which there is no outflow. Industries A and B are upstream of Industry C. All three use the stream for industrial purposes and discharge effluent into the stream. The stream is waters of the United States because it is used by industries in interstate commerce. All three industries require NPDES permits, including Industry C, even though there is no user downstream from Industry C. The question of actual or potential use downstream from the discharger (Industry C) is not relevant to the determination, since the character of the stream as a whole is clearly such as to be susceptible to use by an industry in interstate commerce.

*§§ 122.3 (u) and (v) (proposed § 122.3(t)) Definition of "new sources and new dischargers".*

Some commenters objected to the definition of new source in the proposed regulations, particularly the 120-day limit in paragraph (t)(1)(ii) for the promulgation of proposed standards. These commenters pointed out that the 120-day limit for promulgation of standards was not part of the statutory definition of new sources in section 306 of the Act and so went beyond proper EPA authority. EPA believes that the definition of new source in section 306 of the Act must be read in the context of section 306 in its entirety. Section 306(b)(1)(B) contemplates the promulgation of new source performance standards within 120 days of proposal. See Decision of the General Counsel No. 71. Read together with the definition in section 306(a)(2), this section supports the language of both the proposed and final regulation. Further, there is also an overriding policy in support of the 120-day limitation; since construction of a source to meet new source performance standards can only proceed in a meaningful way if final standards are available, any inequities which may result from EPA failure to promulgate standards within 120 days of proposal are resolved by the language of section 306(d). A source which falls outside the new source definition but is a new discharger and commences construction after October 18, 1972, may gain the benefit of the new source protection period by satisfying the requirements of section 306(d). See preamble discussion of § 122.47(d).

A number of commenters objected to the use of the definition of "new discharger" in proposed § 122.3(t)(2) (now § 122.3(v)). They argued the definition would automatically require a new permit when a discharger ceased operation during the term of the permit. They also suggested the definition could be read to impose new source performance standards on a discharger which recommences operation after terminating a discharge. EPA has revised the definition of "new discharger" in response to these comments. The term now applies only to a genuinely new source of discharge but which is not a "new source" as defined in section 306 of the Act because applicable performance standards have not been issued. The final regulations

continue to require that new dischargers meet applicable standards and limitations upon commencement of discharge, and identify most of these sources as eligible under section 306(d) of the Act and § 122.47(d) for the ten year protection from more stringent standards of performance.

EPA does not intend to require a new permit automatically when a discharge ceases. Many permits cover facilities which in the normal course of their operations cease and recommence discharge. Their permits do not lapse when they cease discharging. However, the proposed rules were intended to require a source which shuts down (including those which do so in order to escape a statutory deadline or other requirement) to meet all applicable standards and limitations upon recommencement of discharge. This requirement is now contained in § 122.17(c)(3).

*Definitions of Application, Discharge Monitoring Report, New Source/ Environmental Questionnaire and Permit.* Proposed § 122.3 referenced Appendices A, B, C and D which were to contain copies of the application form, permit format, new source/ environmental questionnaire and discharge monitoring reports, respectively. These Appendices have been deleted from the final regulations pending completion of these forms. They will be published at a later date.

A new Appendix A has been added which is a redesignation and redivision of the industrial categories appendix contained in former regulations promulgated on May 23, 1978 and December 11, 1978 (see Table I of this preamble). The Appendix has been revised to conform to the modified settlement agreement approved by the District Court and issued on March 9, 1979, in *NRDC* v. *Costle* (which modifies the *NRDC* v. *Train* 8 ERC 2120 (D.D.C. 1976), settlement agreement of June 8, 1976). Additional time after the issuance date for effluent limitations guidelines under the consent decree has been added to allow for processing of permits. This Appendix will be updated from time to time if further modifications are made.

*New Definitions.* In response to comments requesting definitions for additional terms, EPA has included several new definitions in the final regulations.

A definition of "publicly owned treatment works" ("POTWs") (§ 122.3(bb)) has been added which is consistent with the definition of POTW found in other EPA regulations, e.g., 40 CFR § 403.3(m).

A definition of "Direct discharge" (§ 122.3(h)) has been added which states that this term means the discharge of pollutants.

The term "Director" (§ 122.3(i)) has been changed to include both the Regional Administrator and the State Director, as appropriate. Generally, the use of the term Director means that the regulation is applicable to both EPA and approved States. The terms "Regional Administrator" (§ 122.3(cc)), "Enforcement Division Director" (§ 122.3(n)) and "State Director" (§ 122.3(ii)) are now used only where the regulation addresses an action that is unique to one of those people. This change in the use of the term "Director" necessitated the addition of a new term, "State Director" which is the same definition as was found for "Director" in proposed § 122.3(h).

A definition of "process waste water" (§ 122.3(aa)) has been added which restates the definition found in 40 CFR § 401.11(q).

§ *122.4 Exclusions.*

Some commenters thought proposed § 122.4(a)(1) over-stepped EPA's statutory authority to control vessels when "operating in a capacity other than a vessel." Commenters felt that the language in section 502(12)(B) of the Act which defines "discharge of a pollutant" as "any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source *other than a vessel or other floating craft,"* (emphasis added) precluded regulating mining vessels as point sources. The Act does not define "vessels or other floating craft", but it appears that those terms refer to transportation vessels. The legislative history of the Federal Water Pollution Control Act Amendments of 1972 (FWPCA) and the Marine Protection Research and Sanctuaries Act (MPRSA) of the same year, indicated that all ocean discharges within the jurisdiction of the United States were to be regulated by EPA under one Act or the other. As the Senate Public Works Committee noted on the FWPCA:

> Coupled with the provisions in the bill reported by the Committee on Public Works, the bill to be reported from the Commerce Committee [i.e., the MPRSA] should enable the United States to have complete and integrated regulation of the disposal of pollutants *into all waters and over all sources of pollutants subject to its jurisdiction (emphasis added).* See A *Legislative History of the Water Pollution Control Act Amendments of 1972, Senate Committee on Public Works,* 93d Cong., 1st sess. (1973) at 1492 (hereafter FWPCA Legis. Hist.).

Hence, if the commenters are right, the MPRSA or Ocean Dumping Act would require permits for temporarily fixed drilling vessels, ocean mining dredge ships or processing vessels.

We believe the greater weight of authority points to the fact that similar structures should be treated similarly, i.e., an oil platform at sea and an oil platform that is temporarily anchored to the bottom of the sea should have to meet the same requirements under the same Act. Similarly a deepsea mining processing ship should have the same requirements as an onshore processing plant discharging into the ocean. It appears the exception in section 502(12)(B) was intended solely to exclude redundant authority over ocean dumping under NPDES and the Ocean Dumping Act.

The Clean Water Act clearly is better designed to regulate routine industrial discharges. The industry-by-industry approach required for effluent limitation guidelines under the Act is more attuned to handling discharges from these two industries than the Ocean Dumping Act since the Ocean Dumping Act requires extensive studies aimed at finding alternatives to ocean discharges.

Regular sewage discharges from vessels are still regulated by the Coast Guard under section 312 of the Act. Paragraph 122.4(a)(1) is aimed at industrial processes that occur at sea.

Many commenters objected to the comment after § 122.4(a)(2) in the proposed regulations regarding the relationship of section 402 and 404 permits, which incorporated the "primary purpose" test presently stated in Corps of Engineers regulations for section 404 permits, 33 CFR § 323.2(m). These commenters objected to the vagueness of the comment and to the implication that both a section 402 and a section 404 permit could be required for the same activity. This comment has been deleted because the Agency is currently reviewing its position on the overlap between section 402 and 404 permits. Part of this Agency review involves a draft policy document concerning the applicability of the NPDES program to the disposal of solid waste in waters of the United States. Since Agency policy was not resolved at the time of publication of these final regulations, no resolution or further clarification is now appropriate.

Many commenters objected to the restriction contained in § 122.4(a)(3) of the proposed regulations that limited that exclusion to indirect dischargers as defined in § 122.3(o) of the proposed regulations. Although § 122.4(a)(3) has been retained without change, these

comments have been reviewed in conjunction with comments submitted on proposed § 122.3(j) (definition of "discharge of pollutant"). For further details, see preamble discussion on proposed § 122.3(j).

Many commenters objected to the comment after § 122.4(a)(4), pertaining to the exclusion of irrigation return flows, as being beyond EPA authority. Comments under this section were considered in conjunction with those received under proposed § 122.3(j) (discharge of pollutant), § 122.45 (separate storm sewers), and § 122.46 (silvicultural activities). The comment has been deleted and changes have been made in § 122.46 which address many of the concerns raised by commenters.

§ *122.5 Signatories.*

Many commenters objected to the proposed revision of § 122.5, which required that all permit program forms be signed by a principal executive officer of a level of at least vice president for a corporation, or by an equivalent level official for partnerships or for public facilities. This section has been changed to require that only permit applications must be signed by a principal executive officer or equivalent official. Other permit program forms may be signed by a duly authorized representative of the appropriate official so long as the authorized representative is responsible for the overall operation of the discharging facility, and the authorization is made in writing. Further, the signatory may rely on the representations of the person immediately responsible for obtaining the information in the document when certifying to its accuracy, etc. This change will ease the paperwork burden upon the regulated community, while at the same time providing an equal degree of legal accountability on the part of the principal executive officer or equivalent level official. By authorizing a representative to sign other permit program forms, the responsible official does not lose legal accountability for the accuracy of the information that is submitted.

§ *122.10 Application for a permit.*

A number of commenters were concerned about the intent of proposed § 122.10(b) regarding enforcement against persons currently discharging without a permit who have applied for, but have not yet received, an NPDES permit. In response, EPA has deleted this section. However, EPA wishes to clarify its enforcement policy with regard to existing dischargers who have submitted timely and sufficient applications for an initial NPDES permit, and have otherwise proceeded in good faith, but have not yet received a permit through no fault of their own. In those cases, these dischargers will not be subject to enforcement action by EPA for discharging without a permit.

EPA has also placed the requirements of proposed § 124.11(b) and (c) into § 122.10 so that all the requirements relating to permit application will be contained in one section.

Many commenters objected to the requirement in proposed § 124.11(b)(3) and (c) for submitting applications 180 days before the present permit expired (180 days before the discharge) when there is no concomitant requirement on the issuing authority to issue a permit in a resonable time. Because of the significant resource restraints on States and EPA, it may not be possible to issue permits to all applicants, especially minor dischargers, in a set time period. Although the statute requires a permit for a lawful discharge of pollutants, the fact a discharger is without a permit due to the lack of action by the issuing authority will weigh heavily against the instituting of enforcement actions.

§ *122.12 Duration and transferability.*

Some commenters suggested that the five year limit for permit terms be extended to ten years for new sources. While new sources and certain new dischargers may qualify for a "protection period" from any more stringent standards of performance under section 306(d) of the Act, the five year permit term is an express statutory requirement and cannot be altered through these regulations. However, permits may be continued under the Administrative Procedure Act (APA) where the applicant has submitted a timely application for renewal and EPA has been unable to process the application. See § 122.12(b).

Several comments were also received on proposed § 122.12(c) (now § 122.12(d)), which established requirements for transfer of permits. Many of these comments objected to the required approval by the permitting authority prior to transfer, arguing (1) restraint of trade and (2) increase of paperwork. EPA does not agree with the first argument but does agree with the second. Accordingly, paragraph (d) has been revised to make transfer approval automatic within 30 days unless action is taken by the Director. The Director's option to require a new application for permit reissuance or modification, as well as the requirement for a written agreement between the transferor and transferee specifying transfer of liability has been retained.

A new section, § 122.12(c) has been added which substantially incorporates the requirements of former § 124.46 (Compliance with 1984 Treatment Deadlines for Discharges of Toxic Pollutants 43 FR 58066). Some of the requirements originally in former § 124.46, (e.g., the permit must incorporate "[a]ny other terms and conditions necessary to carry out the provisions of the Act") have not been repeated in new § 124.12(c) because they are elsewhere in Part 122.

EPA has moved proposed § 122.33 to § 122.12(b) because "extension of expiring permits" is more logically dealt with in this section on permit duration. In porposed § 122.33, EPA indicated that expiring permits could be "extended" under 5 U.S.C. section 558(c) (section 9(c) of the APA. For clarity EPA has substituted the terms "continuation" or "continued" for "extension" or "extended," since the APA does not use the terms "extension" or extended."

*Proposed § 122.33(a)*—Many commenters objected to the restrictions in proposed § 122.33(a) for automatic continuations, arguing that the only restriction provided by the APA for automatic continuation is "timely and sufficient application for a renewal." Some commenters suggested deletion of the requirement that the delay in permit issuance not be caused by actions of the permittee (proposed § 122.33(a)(2)). Other commenters suggested revising the requirement to provide that requests for evidentiary hearings do not constitute a delay caused by the permittee.

In response to these comments, EPA has deleted proposed § 122.33(a)(2) from the final regulations, but believes that delays caused by the permittee may in some cases render a permit application "untimely." Proposed § 122.33(a)(3) (now § 122.12(b)(1)(ii)) restricts permit continuation to instances where the Regional Administrator is unable to issue a new permit before the expiration date of the old permit. This provision has been retained but it is intended only to implement the requirement of section 558(c) that there be no final Agency determination on an application, and not to restrict the applicability of section 558(c).

*§ 122.33(c)*—Proposed § 122.33(c)(2) (now § 122.12(b)(3)) indicated that a permit continuation could be denied by the Enforcement Division Director when the permittee was not in compliance with the expiring permit. Many commenters contended that such a denial is not authorized by the APA.

EPA agrees and has redrafted § 122.12(b)(3)(iii) accordingly. However, if the Regional Administrator makes a final determination to deny an application for permit reissuance, section 558(c) is by its terms no longer applicable, and the discharger is subject to enforcement action for discharging without a permit.

Several commenters questioned the applicability of this section to permits issues by EPA in NPDES States before the State program was approved. In response to this question, § 122.12(b)(4) clarifies that although § 122.12(b) does not apply where EPA originally issued the permit but an NPDES State is now the permit issuing authority, States may continue the State-issued permit if so authorized under State law.

§ *122.13 Prohibitions.*

§ *122.13(b)*—Several commenters expressed concern over the role of State certification in the permit issuance process. This issue is addressed more directly in the preamble discussion of Part 124, Subpart C.

§ *122.13(c)*—See the preamble discussion to § 123.23 for a discussion of EPA's authority to object to the issuance of State-issued permits under section 402(d) of the Act.

§ *122.13(i)*—In response to a number of comments, § 122.13(i) has been modified. This section has been changed to clarify that only a new source or a new discharger into a water quality segment (as defined in 40 CFR § 130.20(o)(1)) must demonstrate that there are sufficient pollutant load allocations to allow the discharge and that the facility is entitled to these allocations. The proposal applied to all new sources or new dischargers, including those to an effluent limitation segment (as defined in 40 CFR § 130.20(a)(2)). However, upon review of the comments, the Agency determined that the requirement was appropriate only in water quality segments.

§ *122.14 Conditions applicable to all permits.*

§ *122.14(a)*—This section in the proposed regulations (the permit as a limited authorization to discharge) received the greatest number of comments. Many of these comments pointed out the difficulty of analyzing the effect of paragraph (a) without the benefit of reviewing the application form to which it is tied. The Agency agrees with these comments. As a result, the substantive requirements of paragraph (a) are reserved in these final regulations and will be reproposed, together with publication of a draft application form, in the summer of 1979. In conjunction with the application form revision, the Agency is also examining the overall permit scheme, including use of the application data, monitoring requirements, enforcement, the relationship of the application to section 311 and other such considerations.

Although paragraph (a) is withdrawn and reserved for reproposal, a comment has been inserted in its place to reemphasize the Agency's commitment to moving towards the national goal of the elimination of the discharge of pollutants as stated by section 101(a)(1) of the Act. It is no longer acceptable for a discharger to disclaim responsibility for being aware of the impact of its discharges upon human health and upon the environment. The Agency, therefore, expects each applicant to discharge pollutants only in accordance with its application and permit.

Many comments on this paragraph discussed the difficulty of its implementation. In its ongoing development of a new application form, the Agency is addressing many of the major concerns expressed, and commenters will have an opportunity to raise these issues when the Agency proposes its revised approach this summer.

§ *122.14(b)*—The language of § 122.14(b) has been shortened to eliminate superfluous language. The substance remains unchanged.

§ *122.14(d)*—Several commenters argued that permits should only be modified to incorporate section 307(a) standards or prohibitions where the pollutant has been found to be injurious to health. However, the Agency is not empowered to ignore the criteria of section 307(a), which include toxicity, persistence, degradability, and the effect on organisms in waters. When a standard is promulgated under section 307(a) to establish these criteria, it should be incorporated into the permit. However, where a standard under section 307(a) controls a pollutant identified as injurious to health, it is effective and enforceable *whether or not* incorporated into permits and must be complied with by the time set forth in the promulgated standard.

Many commenters were concerned that modification proceedings to conform the permit to a toxic effluent standard or prohibition might also open other permit conditions to modification. Such a result is contrary to this paragraph's express language. Other terms and conditions may be modified only in accordance with § 122.31.

The comment to § 122.14(d) has been expanded to indicate that when the new NPDES application form becomes available, this paragraph will be reproposed to require submission of a new application or partial application as part of the modification proceedings of this paragraph.

§ *122.14(e)*—Many commenters objected to the requirement that permittees notify the Director of process changes or other modifications which do not result in permit violations. In response, this paragraph has been revised to require only notification of activities which would constitute cause for permit modification or revocation and reissuance. This requirement, as revised, is necessary because process or other changes may result in significant discharges of pollutants which are not limited by the permit. Upon receipt of notification under this paragraph, the Director can require further information on a new application which may either justify permit modification or indicate that no modification is necessary.

Several other commenters expressed concern that this paragraph would require daily notifications as a result of variability in their discharges. As noted in the above discussion, this paragraph has been revised and should, therefore, minimize any potential problems presented by waste stream variability.

§ *122.14(f)*—In response to comments, § 122.14(f) has been revised. As revised, EPA believes this provision is consistent with the Supreme Court's decision in *Marshall* v. *Barlow's Inc.*, 436 U.S. 307, (1978).

§ *122.14(g)*—Several commenters expressed doubts whether EPA is legally authorized to require proper operation and maintenance of facilities and systems, including requirements such as effective management of treatment facilities and adequate staffing and training. Such requirements are clearly authorized by section 402(a)(2) of the Act, which requires the Administrator to prescribe conditions in permits which will assure compliance with the requirements of section 402(a)(1).

§ *122.14(h)*—A number of commenters questioned the need to report "minor" noncompliance under § 122.14(h) within 24 hours of becoming aware of the noncompliance. They felt that the Discharge Monitoring Reports (DMR) under § 122.22 provide a sufficiently prompt method of notification. EPA agrees that in instances of "minor" noncompliance the DMR does provide a sufficiently prompt method of notification and has revised § 122.14(h)(2)(iii) to reflect this. In response to comments, we have also revised § 122.14(h)(2)(i) to require 24 hour reporting only for violations of

discharges containing the toxic pollutants limited by toxic pollutant effluent standards under section 307(a) (e.g., Aldrin/dieldrin, Endrin, Toxaphene, Benzidene, Polychlorinated Biphenyls and DDT/DDD and DDE). In addition a new § 122.14(h)(2)(ii) has been added which gives the Director the discretion to require 24-hour and/or five-day reporting in a permit for other noncomplying discharges which may pose health problems (e.g., section 311 substances). The purpose of such prompt reporting is to enable the permitting authority to use the information to make a case-specific determination of the severity of the violation, its possible environmental effects and mitigation possibilities.

The majority of the commenters were concerned with the difficulty in providing the required noncompliance information within 24 hours. Several commenters stated that the determination of corrective measures may in some cases take longer than 24 hours to develop. As stated earlier, this 24-hour requirement is now mandatory for only certain instances of noncompliance. While EPA expects these dischargers to formulate a plan of action for correcting the situation within 24 hours of a violation, such plan may indicate various options for corrective action. It is necessary, however, that the best possible information, including notice of the noncompliance, be provided to the permitting authority within 24 hours of the time that the permittee was aware of the noncompliance so as to enable any action necessary to prevent a crisis, such as contamination of a downstream drinking supply.

Many commenters requested that the term "becoming aware" be more precisely defined. This language has not been changed because it was intended to cover "awareness" based on any or all sources of information such as analysis, measurement or observation.

Some commenters felt that the five-day requirement for submission for written information might not be long enough if a corporate vice president must sign a letter, under the requirements of § 122.5. This situation has been addressed in changes to § 122.5, which now allows for the delegation of such responsibilities and through changes to § 122.14(h)(iii) discussed earlier.

§ *122.14(i)*—The language of § 122.14(i) has been shortened to eliminate superfluous language but the substance remains unchanged.

*Proposed* § *122.14(j)*—The substance of this section has been moved to Part 125, Subpart A. The requirement that permits to POTWs include sewage sludge disposal conditions under section 405 has been moved to § 122.15(h). Many commenters objected to the prohibition against discharge of solids, sludges, filter backwash or pollutants removed in the course of treatment or control of wastewaters. However, to allow discharge of substances which have been removed by treatment systems would result in circumvention of the Act's requirements for limiting discharge of those substances which can be removed by the treatment.

§ *122.14(j)*—Some commenters argued that halting or reducing production as required in proposed § 122.14(k) (now § 122.14(j)) may cause greater environmental harm than continuation of production. The Agency believes that the pollution problems which may occur as a result of shutdown and startup will generally be less severe than those characteristic of situations of continual noncompliance. Rather than require the Director to decide immediately in each case whether the environmental harm caused by shutdown or reduction might be greater than that caused by continual noncompliance, the requirements of this subsection have been retained. It should also be noted that paragraph (j) is not as harsh as some commenters have indicated, since it is modified somewhat by the upset and bypass provisions.

§ *122.14(k)*—In response to comments, the bypass provision (proposed § 122.14(l)) has been redrafted for clarity. Many commenters stated that the bypass notification requirements were impractical and internally inconsistent. The provision has been modified to require permittees to submit notice within 24 hours of becoming aware of the bypass in those circumstances where the necessity for a bypass cannot be anticipated. Where the need for a bypass is known in advance, the permittee must now submit a request for approval at least 10 days before the anticipated event.

Several commenters stated that it was inappropriate for the Agency to limit bypasses to situations where there is a risk of "serious" injury. This provision has been modified to apply where there is a risk of "personal" injury.

Commenters objected to the statement that treatment facilities should generally be constructed with redundant or backup equipment. This comment was merely intended to note that proper engineering practices often involve the use of redundant or backup systems for equipment such as pumps or power supplies. Such practice can eliminate any noncompliance during periods of equipment malfunction or maintenance. This comment has been modified to clarify that the pemitting authority will take into account whether the bypass involved regular preventive maintenance for which backup equipment should have been available.

Several commenters stated that bypasses should be authorized during periods of preventive or corrective maintenance. However, in most cases waste treatment facilities should be designed with redundant equipment and with sufficient storage capacity such that bypassing is not necessary during periods of maintenance. The bypass provision is intended to provide relief from permit limitations during unusual circumstances; it is not intended to allow limitations to be routinely exceeded.

Some commenters objected to the requirement that the public be afforded an opportunity to comment on requests for bypasses. However, the Agency believes that the critical review offered by the public is a useful element of the system.

Many commenters argued that economic loss caused by delays in production should be included in the definition of severe property damage. After serious consideration, the Agency has rejected this position. Except in limited cases, the Clean Water Act does not authorize noncompliance with effluent limitations because of the cost to an individual facility. Where effluent limitations, which include consideration of the cost of operation of waste treatment facilities, have been properly established, a source must either comply or close. Nonetheless, this section provides for the authorization of intentional bypass where failure to bypass would result in severe property damage. In most cases this damage would be to the treatment facility itself; thus, failure to allow bypass would jeopardize future adequate treatment. In the oil and gas production industry, severe property damage includes permanent loss of oil which might result if a well were to be shut in. For electric generating facilities, curtailing production might risk substantial property loss to users of the electricity. In all of these cases consideration beyond the economic loss to the permittee warrant a bypass.

Further, although permittees may be required to limit production rather than exceed limitations, this risk can be minimized by the prudent use of back-up equipment and the capacity to store untreated wastes during periods of maintenance. The Agency will consider

the reasons for noncompliance in exercising its discretion to enforce.

§ *122.14(l)*—In response to comments, the upset provision (proposed § 122.14(m)) has been redrafted for clarity. Many commenters also noted that proposed subparagraph (m)(2) provided only that an upset "may" constitute an affirmative defense. However, it is the Agency's intention that a defense of upset is available if the applicable conditions are satisfied. The provision has been amended to reflect this.

The comment following this section relating to judicial review of Agency determinations was confusing to several commenters. In response to these concerns, the comment has been revised to indicate that the initial Agency determination on a claim of upset constitutes an exercise of prosecutorial discretion, not final Agency action subject to judicial review. Since upset is an affirmative defense, the permittee's opportunity for review of a claim of upset will be in the context of any enforcement action for noncompliance.

Many commenters stated that an upset should not be treated as a permit violation in the first place and that it was improper to require permittees to prove an upset as an affirmative defense in a court action. Commenters relied on *Marathon Oil Co.* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977) in support of this position.

The Agency believes that this upset provision is fully consistent with all legal opinions dealing with this issue. Most Courts have concluded that no upset provisions need be provided. In *Weyerhouser Co.* v. *Costle*, 590 F.2d 1011, 1056–58 (D.D. Cir. 1978) and *Corn Refiners Ass'n* v. *Costle*, (No. 78–1069, 8th Cir. April 2, 1979) the District of Columbia and the Eighth Circuits recently held that EPA's exercise of its enforcement discretion would adequately deal with any possible problem. *See also United States Steel* v. *Train*, 556 F.2d 822, 842, n.3 (7th Cir. 1977); *American Petroleum Institute* v. *EPA*, 540 F. 2d 1023, 1035–36 (10th Cir. 1976). Although the Agency will continue to exercise its enforcement discretion, EPA believes that all parties will benefit from allowing permittees an opportunity to present their claims in a formal judicial proceeding. This provision also meets the requirements set out in those decisions which required some form of upset relief. See *Marathon Oil Co.* v. *EPA, supra; FMC Corp.* v. *Train*, 539 F.2d 973, 986 (4th Cir. 1976). In *Marathon*, the Court of Appeals for the Ninth Circuit clearly indicated that the burden of proof and the obligation to provide relevant evidence establishing that the noncompliance could not have been prevented could be placed on the permittee. The requirement that an upset be established as an affirmative defense is an efficient and effective method of implementing this obligation. The only alternative approach would be to require an administrative determination with respect to upsets. However, Congress has indicated, in reference to section 309(a)(5)(B) of the Act, that enforcement actions should not be bogged down in administrative determinations or showing of fault. See *A Legislative History of the Clean Water Act of 1977*, Senate Committee on Environment and Public Works, 95th Cong., 2d sess. (1978) at 464–65 (hereafter *CWA Legis. Hist.)*. Although the upset provision does authorize permittees a limited opportunity to make such showings, it is properly placed in the context of judicial determinations in an enforcement action.

Commenters have not been able to identify significant impacts from this approach. The Act contains no provision for administrative penalties, and sanctions can only be imposed after a judicial determination of a violation. Further, noncompliance reporting requirements exist independently of whether the noncompliance was caused by an upset. One commenter did note that under § 122.31, a permit may be withdrawn by administrative action for previous violations. It is agreed that an opportunity to prove upset must be afforded in such cases.

While the Agency will, of course, consider the possibility of upset where relevant, it must be stressed that upsets are exceptional events which should occur infrequently. The upset provision should not be construed as providing relief where there is a pattern of permit violation.

In response to comments, § 122.14(l)(1) has been revised to indicate that noncompliance due to operational error or lack of preventive maintenance does not constitute an upset. EPA believes these revisions clarify the situations listed in the original proposal.

Commenters objected to the requirement that a specific cause be identified in establishing an upset. They claimed that even properly run facilities may have upsets for which no particular cause can be found. However, requiring permittees to identify the cause of noncompliance is an essential aspect of placing the burden of proof on the permittee to show that an upset was beyond its control. If upsets could be proved merely by asserting that a facility was being properly run at the time of noncompliance, the burden of proof would be reversed and the prosecution would be required to establish the cause of the upset to rebut this showing. Such an approach would make enforcement extraordinarily difficult. Congress intended that prosecution for permit violation be swift and simple, and this provision implements that objective while allowing permittees to demonstrate that noncompliance could not be avoided. Further, the requirement that a cause be identified will encourage permittees to examine the operation of their treatment system and will help ensure that noncompliance is not repeated. Finally, where a cause of noncompliance cannot be identified, the Agency may still exercise prosecutorial discretion not to enforce in situations where it is not warranted.

Some commenters asserted that the upset provision would undercut the States' authority to impose stricter effluent limitations. In response to this concern, EPA has revised this section to make clear what was originally intended—the upset provision applies only to violations of technology-based effluent limitations established pursuant to sections 304 and 306 of the Act. This change is consistent with the *Marathon* decision, and necessary to achieve the goals of the Act. Violations of stricter State standards or water quality based effluent limitations are not subject to a defense of upset.

§ *122.15 Applicable limitations, standards, prohibitions and conditions.*

§ *122.15(f)*—Paragraph (f) listed situations where limitations more stringent than those required by sections 301(b)(1)(A), 301(b)(1)(B), 301(b)(2)(B), and 306 of the Act would be required. Some commenters suggested an additional situation, where necessary to conform to applicable water quality requirements under section 402(a)(2) of the Act, when the discharge affects a State other than the certifying State. EPA agrees and has added § 122.15(f)(4) to cover this situation.

Some commenters were concerned that paragraph (f)(8), which indicated that additional or more stringent permit limits could be established based on "fundamentally different factors," might be misinterpreted to mean that fundamentally different factors variances could only result in additional or more stringent limits. To address their concerns, EPA has added a comment indicating that less stringent permit limits may also be requested based on fundamentally different factors. Further details as to fundamentally different

factors variances are found in Part 125, Subpart D, and related preamble discussion.

Paragraph (f)(9), which provides for incorporation of additional requirements, conditions or limitations into a new source permit based on the National Environmental Policy Act or section 511 of the Clean Water Act, provides the basis for the incorporation into NPDES permits of conditions related to an Environmental Impact Statement (EIS). Some commenters suggested nonwater related EIS condition cannot be placed in permits. However, EPA believes that EIS-related conditions may be imposed in NPDES permits in order to minimize any adverse impacts on the environment identified in the EIS, regardless of their relation to water pollution or water quality problems. (See September 23, 1976, Memorandum of the General Counsel, entitled *EIS Regulations for NPDES Permits* and former 40 CFR § 6.918). To do otherwise would negate the purpose and intent behind the requirement that an environmental impact statement be prepared.

Commenters also argued that the Act does not authorize the case-by-case establishment of technology-based permit limitations as contemplated by paragraph (f)(10). This argument is unpersuasive in light of section 402(a)(1) of the Act, which authorizes the establishment of "necessary" conditions in the absence of effluent limitations guidelines. Moreover, this argument has been rejected in the courts and by long-standing EPA policy (see preamble discussion to Part 125, Subpart A). Thus, this section has not been changed.

A new paragraph § 122.15(f)(11) has been added to assure consistency with the pretreatment regulations (40 CFR Part 403) which may, in some cases, require more stringent limitations.

§ *122.15(g)*—A number of commenters questioned the relationship between "best management practices," under proposed § 122.3(f) and § 122.15(g); and "operating practices" under proposed § 122.15(i). Since best management practices include operating practices, the two sections have been combined.

Thus, paragraph (g), has been revised to clarify that "best management practices" (BMPs) may be required in permits where numeric effluent limitations are infeasible, or where reasonably necessary to achieve effluent limitations and standards. These BMPs are similar to those authorized pursuant to section 304(e) of the Act (which is covered in detail in Part 125, Subpart K); however, they are authorized by section 402 and EPA's authority has been so recognized in *NRDC* v. *Costle*, (Runoff Point Sources). In addition, a comment has been added which provides examples of BMPs which could be required under paragraph (g). See also preamble discussion under proposed § 122.3.

§ *122.15(i)*—Proposed paragraph (j) (now paragraph (i)) which prohibited "backsliding" in permit levels of control with limited exceptions, has been retained. The concerns of some commenters about the effect of paragraph (j), where permits are based on interim final effluent guidelines which are more stringent than final effluent guidelines, have been addressed in § 122.31. Paragraph (j) is superseded in these cases by § 122.31(e)(4), which allows limitations based on more stringent interim final limitations to be modified based on less stringent final guidelines if a modification request is made in a timely manner. In addition, § 122.15(i)(3) now indicates that there is a third instance where "backsliding" will be allowed, i.e., for conventional pollutants. Congress directed EPA to shift its pollution control technology to toxics. (See *CWA Legis. Hist.*, Statement of Managers, at 269). The 1977 amendments to the Act (sections 301(b)(2)(E) and 304(b)(4)) set out a completely new test for conventional pollutants. The new requirement, known as best conventional technology (BCT), is based on a comparison to the cost of secondary treatment and a cost/benefit test. The test sets best practicable technology (BPT) effluent guidelines as a floor and best available technology (BAT) as a ceiling. In a small number of cases, where no promulgated guidelines were in effect at the time of initial permit issuance, (i.e., where a section 402(a)(1) limit is very stringent) the test may result in effluent limits for BCT less stringent than limitations in the original permit for BPT. In these cases, EPA believes that, consistent with Congressional intent, backsliding to BCT should be allowed.

*§ 122.16 Calculation and specifications effluent limitations and standards.*

§ *122.16(a)*—A number of commenters suggested that "actual production," as used in proposed § 122.16(a) as the basis for calculating permit limitations, standards or prohibitions, should be defined or clarified.

In response to these suggestions, a comment to § 122.16(a) has been added, which explains that permit limitations will be calculated based upon a reasonable measure of production, taking into account historical data in the case of existing facilities, or market data for new or significantly modified facilities or processes. In the case of new or modified facilities or processes, permit limitations are subject to subsequent modification once a pattern of production figures become available.

Other commenters questioned whether proposed § 122.16(a) was intended to apply to POTWs, and if so, how? In response to these comments, EPA has added a new § 122.16(a)(3) which states that POTW permit limitations are to based on design flow. Basing POTW permit limitations on design flow will allow growth, while at the same time maintain the proper level of treatment due to the 85% removal requirement in 40 CFR Part 133. Since the percentage removal requirement is not applicable to industries, their limits must be based on actual production.

In response to a specific invitation for comments in the August 21, 1978, preamble discussion on proposed § 122.16 some commenters favored the use of an alternative effluent limitation approach for calculating permit limits. The approach described in that preamble was: (1) Determine a total technology-based effluent limitation for the entire plant and (2) relocate this total discharge among the outfalls, as long as the plant continues to meet the overall technology-based requirement. EPA is still evaluating this proposal. Should it prove appropriate within the constraints of the Act, EPA may adopt this alternative approach in future rulemaking. This portion of § 122.16(a) is promulgated as proposed.

§ *122.16(c)*—A number of commenters suggested that certain terms in § 122.16(c) (Proposed § 122.16(b)) such as "maximum daily discharge", "average monthly discharge" and "average seven consecutive day discharge" be defined. These definitions have been added to § 122.16(c) and for clarity the term "average seven consecutive day discharge" has been replaced by "average weekly discharge".

Several commenters questioned the distinction between the terms used in § 122.16(c) for the calculation of permit limitations of POTWs and discharges other than POTWs. The distinction between these two general types of discharges is based upon existing requirements in effluent guidelines and its secondary treatment information (40 CFR Part 133). In order to maintain consistency with effluent guideline and secondary treatment requirements, § 122.16(c) has not been changed, except as discussed earlier.

A number of commenters urged that the permitting authority should have the

discretion to require either mass- or concentration-based limitations, depending on the nature of the process and the receiving waters. This approach has not been adopted, except as provided in § 122.16(d), because the Agency continues to believe that most permit limitations standards and prohibitions must be expressed quantitatively in terms of mass in order to preclude the use of dilution as a substitute for treatment. Paragraph (d) of § 122.16 allows the use of concentration limits under circumstances in which administrative or technical problems make the use of mass limits impracticable or inconsistent with other requirements such as promulgated effluent guidelines or pretreatment standards. (EPA has decided to state pretreatment standards in terms of concentration and wherever possible to provide an equivalent mass per unit of production, see preamble discussion to 40 CFR Part 403, June 26, 1978, 43 FR 27743–27744).

§ *122.16 (f) and (g)*—Paragraph 122.16(g) (proposed § 122.16(f)) provides for issuance of permits based on net terms rather than gross terms. Dischargers may receive a credit, under specific conditions, for pollutants present in their intake waters. Numerous commenters objected to the conditions under which a credit would be granted and suggested that the various conditions be deleted. EPA has not deleted any of the conditions necessary for achieving a credit allowance and, therefore, receiving a permit calculated on a net basis. EPA considers these conditions as reasonable and consistent with court decisions and also believes they are necessary for achieving the goals of the Act.

The limitations upon the net/gross provision in these final regulations grow out of the technical basis on which effluent limitations guidelines are established. Without exception, EPA has developed effluent limitations guidelines on a gross, not a net, basis. The guidelines assume that a treatment technology will achieve a final effluent concentration which is independent of fluctuations in influent concentration, within a very broad range. (For a discussion of the independence of effluent concentration from raw waste concentration in the petroleum refining industry, for example, see 40 FR 21939–21949 (May 20, 1975).) The effluent levels achieved by good treatment may be close to background levels in some receiving waters. This fact underlines the mischief which can result from an indiscriminate application of net limitations. A plant may have a treatment system which, properly operated, achieves a suspended solids limit of 15 mg/l with a raw waste between 150–600 or more mg/l. If the intake concentration is 15 mg/l, this will have no effect upon the achievable final effluent concentration. Yet indiscriminate application of the "net" requirement would allow the discharger to discharge 30 mg/l, or twice the concentration which a well-run treatment system should achieve. For this reason, EPA has restricted the application of the "net" allowance to those cases where the treatment required by the Act will not remove the pollutants in the intake water (such as, for example, where cooling water is discharged without settling).

Many commenters suggested that proposed § 122.16(f) (now § 122.16(g)(1)) be revised to read that permits "shall" be written on a net basis rather than the discretionary "may" in the proposed regulation. EPA has accepted these comments in part. EPA does not believe every permit should automatically be written on a net basis (assuming the conditions of § 122.16(g) are met) because some dischargers may not want to do the sampling, etc., necessary to develop a net permit. Therefore, the discharger must actually request calculation on a net basis at the time of permit application. However, EPA does believe, if calculation on a net basis *is* requested, and all the conditions of § 122.16(g) are met, the permit should be written on a net basis. To this extent, EPA has accepted the suggestion of these commenters.

Several commenters objected to the requirement in § 122.16(g)(1) (proposed § 122.16(f)) that limits the availability of credit to those dischargers who discharge their effluent into the same body of water from which they received their influent. While a discharger should not be held responsible for pollutants already existing in its water supply if the discharge is into the same body of water from which the discharger took water, the same reasoning cannot support allowance of a credit where the discharge is into another body of water. The grant of a credit in the latter case would allow a discharger to transfer pollutants from one body of water to another, thus, adding pollutants to receiving waters for the first time. An exception to this rule is where the discharge is made into a tributary of the stream from which the influent was taken. In such a case a credit may be allowed since the tributary will be considered to be the same body of water as the downstream lake or river for the purpose of § 122.16(g).

A number of commenters objected to proposed § 122.16(f)(2) (now § 122.16(g)(2)) as being vague. The intent of this section was to deny calculation of effluent limitations on a net basis if the discharger's influent treatment system (to clean water for the manufacturing process) or the wastewater treatment system entirely removes specific pollutants which had been present in the intake waters and are limited by the dischargers permit. This intent has been clarified in § 122.16(g)(1)(i)(B).

The provision that a credit shall only be allowed for pollutants present after any treatment steps have been performed on the intake water is also repeated in § 122.16(g)(2) (proposed § 122.16(f)(4)). Some commenters objected to this requirement suggesting that EPA has no jurisdiction to regulate intake pollutants but may only regulate pollutants added by the discharger. See *Appalachian Power Co.* v. *Train*, 545 F.2d 1351, 1377 (4th Cir. 1976). In *Appalachian Power* the court said that EPA only had jurisdiction over pollutants added by the discharger. EPA believes that when a source changes the character or concentration of an intake pollutant and then discharges it, the source is, in effect, adding a pollutant to the water. For example, one step in the pretreatment of intake water in many industries is chlorination to protect pipes and process equipment from algae formation. This treatment will result in chlorination of the intake pollutants thereby rendering them more toxic. When this occurs, the discharger should not be allowed to pass through those pollutants in its waste stream without some responsibility for treatment. If the discharger can demonstrate that the character or concentration of the pollutants has not changed after pretreatment, then a credit for those pollutants will be allowed. These determinations will have to be made on a case-by-case basis.

A credit may be allowed for the amount of pollutant remaining in a discharger's intake water after any treatment of the intake waters and wastewater treatment. Thus, if a discharger treats its intake water and removes 90 percent of a pollutant, the discharger may be entitled to a credit for the remaining ten percent left in the water used in the plant process. If the discharger's waste treatment system also removes 90 percent of the pollutant, the discharger's credit of ten percent shall be reduced by 90 percent because the pollutant remaining in the influent is being treated a second time, thereby, reducing the pollutant by an additional

90 percent. Therefore, the discharger's total credit following both treatments would be one percent of the pollutant in the original influent. To clarify this result, the word "incidentally" was deleted from § 122.16(g)(2) (proposed § 122.16(f)(4)).

Some commenters objected to the requirement in § 122.16(g)(2) (proposed § 122.15(f)(4)) that a credit could not be granted where the pollutants in the intake waters were "chemically or biologically" different from the discharge water. This requirement was considered vague and overly broad. EPA disagrees. Generic pollutant parameters such as biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC) or total suspended solids (TSS) are broad measurements of a number of specific chemicals or materials. TSS, as measured at an intake point, may consist mostly of river silt; but after being used in a process the TSS, as measured at the outfall, may include substantial quantities of metals or other materials with toxic characteristics. EPA considers it essential to avoid allowance of credit when the pollutants in the discharge water vary significantly in toxicity from the pollutants in the intake water. Dischargers should not be allowed an unrestricted right to add more toxic pollutants to their discharge waters.

Finally, a new sentence has been added to § 122.16(g)(2) stating that a credit not be allowed for the discharge of pollutants which have been made more concentrated by a discharger (the third sentence has been similarly revised to state that the pollutants discharged cannot vary physically, e.g., in concentration from the pollutants in the intake water). For example, when waters are taken from a stream and used in a cooling pond, this use may result in the loss (through evaporation or otherwise) of significant amounts of the water thereby concentrating the remaining pollutants. This action by the discharger—causing the character of the water to change by increasing the amount of pollutants per volume of water—constitutes an addition of pollutants to the stream. Therefore, a source will not be allowed to discharge this water without treatment.

§ *122.16(h)*—A number of comments were received on the subject of batch discharges, under § 122.16(h), suggesting that definitions of terms used in § 122.16(h) be provided, and that restrictions on batch discharges be relaxed.

Paragraph 122.16(h) has been redrafted. The Agency's intent is unchanged, however, the terminology has been clarified. As proposed, the paragraph used the terms "continuous," "batch" and "intermittent" discharges but did not define them. In final form, paragraph (c) now defines "continuous discharge" and paragraph (h) now deals with "noncontinuous discharges." In addition, paragraph (h) now clearly indicates that the requirements of § 122.16 (c) and (d) (proposed paragraphs (b) and (d)) are applicable to the discharges described in this paragraph. Subparagraph (h)(2) has been revised to clarify that limits refer to specific pollutants.

Several commenters argued that batch discharges should be limited only in cases where water quality standards would be violated. Such a provision would be inconsistent with the Act's technology-based treatment requirements which apply regardless of water quality impacts.

§ *122.16(i)*—Many commenters urged that the Agency should not impose limitations and standards upon internal waste streams under § 122.16(i) and questioned the Agency's authority to do so. Other commenters urged that the Agency should broaden the circumstances under which internal waste stream limitations would be imposed. EPA continues to believe that the Act provides authority to regulate internal waste streams in appropriate circumstances. The Agency's intent regarding the imposition of limitations upon internal waste streams has been clarified by means of a comment to § 122.16(i) which states that limitations on internal waste streams will not be imposed routinely, but only under exceptional circumstances which make monitoring of the final discharge point impractical or infeasible. The comment also provides examples of where internal waste stream limitations might be necessary.

§ *122.17 Schedules of compliance.*

Several commenters thought that proposed § 122.17(e) (now § 122.17(d)) provided for a schedule of compliance which allowed compliance after the statutory deadline. This was not EPA's intent, so to avoid any possible confusion this paragraph has been revised to clarify that compliance with statutory treatment requirements must be as soon as possible, but no later than the applicable deadline imposed by the Act.

In response to comments, § 122.17(c) has been redrafted to explain in greater detail the use of two alternative schedules of compliance in cases of planned or contemplated plant "shut-down" or discharge to a publicly owned treatment works. These two schedules, when read together will indicate a critical date for the decision to cease discharge rather than proceed toward compliance—and irreversible date on which steps toward compliance must be taken. No later than this date, if the permittee does not intend to construct the required treatment technology, it must make a firm public commitment to cease discharge. Examples of firm public commitment have been provided in the Comment to § 122.17(c).

Some commenters also thought that the requirements of § 122.17(c) should not apply where a discharge to a POTW is planned, but should apply where Federal funding problems, beyond the control of the permittee, delay the planned "tie-in" to the POTW. In cases of this sort, paragraph (c) must be considered in conjunction with sections 301(i)(2) and 309(a) of the Act, which authorize limited extensions of statutory compliance dates. EPA has no intention of negating these provisions of the Act through the operation of paragraph (c).

A new paragraph, § 122.17(e) has been added to deal with the situation where a POTW received a section 202(a)(2) innovative and alternative wastewater technology grant. POTWs constructing facilities with this grant money may not achieve the statutory treatment limitations because the innovative technology, as applied, may not work as planned when the facility is completed. Section 202(a)(3) of the Act recognizes that the facilities may have to be modified or replaced and thus, to encourage innovative and alternative technologies, authorizes grants of 100 percent of these costs if the Administrator determines that certain conditions are met. EPA believes that in order for the Permits Program and the Construction Grants Program to work in concert, the permit schedule of compliance should be modified if this unique type of construction grant is awarded. Thus, this new paragraph provides that the permit may be modified to extend the schedule to account for the amount of time lost in building the first treatment plant. This new paragraph does not, however, authorize EPA to extend the statutory date for compliance. If the POTW cannot achieve compliance in time, the schedule will not be extended. However EPA, in it exercise of prosecutorial discretion, may consider the grant under section 202(a)(3) when assessing the POTWs efforts to comply with statutory treatment requirements.

*§ 122.20 Monitoring.*

Several commenters suggested that § 122.20(b), which requires the Director to specify monitoring requirements in permits, should be deleted. No change has been made in this paragraph. EPA believes that there is an important need to tie permit limits to specific monitoring equipment or methods, such as biomonitoring, in complex situations involving toxic pollutants.

*§ 122.20 (c) and (d)*—Section 122.20 has been amended to provide guidance for establishing sampling and measuring requirements in NPDES permits. The section also requires that once monitoring requirements are established for an NPDES permit such requirements cannot be changed unless the permit is modified in accordance with § 122.31.

In establishing monitoring requirements there are several considerations. Many effluent limitation guidelines have been determined by statistical analysis of the pollutant levels found in a large number of composite samples or in grab samples. Consequently, a permitting authority may require that sampling for compliance monitoring be done in a manner consistent with the data base used in setting the limitation guideline. The development documents for effluent limitation guidelines often indicate the general method of sampling used to accumulate the data for guidelines setting. The revisions to § 122.20(c) indicate that less detailed monitoring may be appropriate in some cases, but once a permittee has accepted a given set of monitoring requirements, the permittee is bound by that approach unless the permit is modified for other reasons, in which case monitoring requirements may be reexamined.

*§ 122.22 Reporting of monitoring results and compliance by permittees.*

Several commenters objected to § 122.22(a) because it could be read to require permittees to submit monitoring results to both EPA and where appropriate the NPDES State. In response to these comments, EPA has substituted the term "Director" for the proposed terms "Enforcement Division Director and . . . Director" to indicate that only one report must be submitted to the appropriate permit issuing authority (unless otherwise specifically required).

Several commenters objected to the requirements for reporting of monitoring results for pollutants not limited in the permit. However, section 308 of the Act clearly authorizes such a requirement. Even in those situations where monitoring is not required, it is clear that if the permittee has conducted monitoring activities, they should be reported to provide as complete and accurate a picture of the discharge as possible.

Other commenters suggested that § 122.22(a) should be limited to monitoring done at the monitoring points specified in the permit. EPA has not accepted this suggestion since it would allow circumvention of this requirement by sampling at a point other than that specified in the permit.

Several commenters suggested that the imposition of a maximum $10,000 fine per violation (e.g., false statement) (§ 122.22(d)) is inconsistent with section 309(c)(2) of the Act. This is a misreading of the Act, which states that any person who knowingly makes "any" false statement should be liable up to $10,000. If this section is violated several times as a result of several false statements, each violation is separately subject to the statutory fine.

*§ 122.23 Quarterly noncompliance reporting.*

Many comments were received indicating that definitions of "major" and "minor" permittees should be provided in the regulations. However, "major" and "minor" are not permanent classifications. Rather, these classifications are intended to provide EPA and the States with flexibility to establish priorities for permitting and compliance activities so as to best utilize existing resources. Thus, it is more appropriate that information on "major" and "minor" classifications be provided in annual guidance, rather than fixed in these regulations. However, in order to emphasize that the "major" or "minor" classification relates to the nature of the discharge and not the nature (or size) of the facility, the regulations have been revised to read major [or] minor "discharger" rather than "permittee" (see, e.g., § 122.23(a)).

Several commenters objected that the quarterly reporting requirements were too frequent, too resource-intensive, and not useful. However, the regulation were designed to minimize the amount of reporting and to focus on the most significant instances of noncompliance by major dischargers in the narrative portion of the report. In fact, the proposed (and final) regulations change the existing requirement by adding narrative information on noncompliance with effluent limitations by major dischargers, continuing the existing narrative reporting requirements on schedule violations by major dischargers, and reducing the required reporting on noncompliance by minor dischargers to annual statistical reporting. EPA believes that these changes will result in less resources devoted to preparing reports while providing the most useful, up-to-date information to interested members of the public.

Many comments were received concerning § 122.23(b)(3). Specifically, concern was expressed that serious effluent limitation violations of short duration would not be reported. Other commenters stated that the definition of a pattern of noncompliance did not adequately handle noncompliance for parameters requiring continuous monitoring. The concern was expressed by many that our definition would result in almost continuous reporting of many minor violations. In response to these comments, two changes have been made. First, the definition of a pattern of noncompliance has been changed by adding the sentence: "This pattern of noncompliance is based on violation of monthly averages and excludes parameters where there is continuous monitoring, such as pH". Second, a paragraph has been added that provides for the reporting of a significant discharge of a pollutant that otherwise would not be reported.

Many other comments were received requesting clarification of requirements for format, copying and distribution. We do not believe such specific details are appropriate for regulation. These concerns will be addressed in guidance issued by the Office of Enforcement on report preparation.

*§ 122.31 Modification, revocation and reissuance, and termination.*

The majority of the comments on proposed § 122.31 dealt with two general areas. First, many commenters thought that permit modification or revocation was inconsistent with a fixed term permit and the concept of finality as expressed in section 402(k) of the Act. However, the protection provided by section 402(k) is expressly limited by section 402(b)(1)(C) of the Act, which states that permits may be modified or terminated (revoked) for cause, "including but not limited to" three specified situations which are representative examples, not an exhaustive list. Other situations may also constitute good and valid cause for permit modification or revocation. EPA believes that "cause," as defined in § 122.31, falls well within the authority of section 402(b)(1)(C) of the Act, notwithstanding section 402(k).

Second, a large number of commenters, while recognizing EPA's

authority to modify or revoke permits, suggested that causes for revocation and causes for modification should be listed separately since absolute revocation is a more "severe" measure. EPA agrees with these commenters and has separated and reduced the causes for absoulte revocation. For clarity in distinguishing between the methods used for changing or terminating a permit, three terms are used in § 122.31 and throughout these final regulations: "modification," "revocation and reissuance" and "termination." "Modification" is used where existing permit conditions are changed but the permit expiration date remains the same. "Revocation and reissuance" is used to describe the action to revoke an existing permit and reissue a new permit which provides the permittee the protection of a new five-year permit. Finally, "termination" means the revocation of an existing permit, where a new permit is not reissued.

Proposed § 122.31(d) listed thirteen situations which constituted "cause" for permit modification or termination. In accordance with EPA's decision to separate cause for "termination" from cause for permit "modification" or "revocation and reissuance," a new paragraph (e) has been added to supplement paragraph (d). In the final regulations paragraph (d) contains five situations where a permit can be either "modified," "revoked and reissued" or "terminated." These include the three situations listed in the Act plus two other situations. The first situation is where information indicates that the discharge poses a threat to human health or welfare (see discussion of paragraph (d)(4)). The second situation, a change in ownership, was added in response to comments (see discussion of paragraph (d)(5)).Paragraph (e) lists all other situations which are cause only for permit "modification" or "revocation and reissuance."

Several commenters suggested additional situations that should constitute "cause" for permit modification. The suggested causes included: revisions to the best practicable waste treatment technology standards; promulgation of regulations governing the disposal of sewage sludge under section 405(d) of the Act; and the inability of a permittee to meet permit limitations despite installation of technology contemplated by the permit. EPA does not believe that these situations constitute "cause" for modification or revocation and reissuance. However, in response to comments, two additional "causes" have been added: (1) § 122.31(d)(5), a change in ownership or control of a source which has a permit, consistent with § 122.12(d) (where no changes in the permit are necessary, the permit may be modified but is not subject to public notice or an opportunity for a hearing in accordance with § 122.31(f)(4)), and (2) § 122.31(e)(7), failure of an NPDES State to notify an affected State of a discharge that originates in the NPDES State as required by section 402(b)(3) of the Act.

One commenter also felt that procedural safeguards surrounding the revocation and reissuance, and termination of a permit were inadequate and did not meet the requirements of 5 U.S.C. section 558(c). In response to this concern, it should be noted that §§ 122.1(b)(2) and 122.30 specifically state that all actions will be taken in accordance with the procedural requirements of 40 CFR Part 124, thus providing adequate procedural safeguards.

§ *122.31(d)*—Section 122.31(d)(1) states that "violation of any term or condition of the permit" constitutes cause for permit modification, revocation and reissuance, or termination. Many commenters objected to this and specifically to the use of the word "any" since it did not distinguish between serious, repeated, or willful violations and minor, single, or inadvertent violations. EPA understands that these commenters fear that under the proposed regulations, a single, minor permit violation could result in permit termination and subject the discharger to action for discharging without a permit. While this is an unlikely case, the Act specifically states that violation of any condition of the permit constitutes cause for permit modification or termination. Consequently, EPA has not revised this paragraph; however, the permitting authority will normally consider the seriousness of the violation and the use of other enforcement actions before deciding to terminate a permit under this paragraph.

Paragraph 122.31(d)(2) states that "failure of the permittee to disclose fully all relevant facts or misrepresentation of any relevant facts by the permittee" constituted cause for permit modification, revocation and reissuance, or termination. Many commenters felt that this subsection should require knowing or willful failure to disclose facts. As with proposed § 122.31(d)(1), EPA has not made the suggested change because this paragraph mirrors the language in the Act. In response to comments, however, EPA has clarified the final clause in this paragraph to indicate that misrepresentation of any "relevant" fact is intended to be subject to this paragraph.

The last sentence to both proposed §§ 122.31 (d)(1) and (d)(2) stated that the two situations, violation of any term or condition of a permit or failure of a permittee to disclose all relevant facts, constituted cause for termination, revocation and reissuance, or modification only when such changes would make the permit more stringent. Many commenters strenuously objected to the more stringent requirement in the last sentence and gave examples of when a permit should be made less stringent. Although EPA believes that circumstances justifying a less stringent permit will be extremely rare, comments suggesting such circumstances were persuasive. Accordingly, EPA has deleted the more stringent modification restriction in paragraph (d) (1) and (2) to allow less stringent modifications if justified.

In response to comments which pointed out that proposed § 122.31(d)(3) did not properly paraphrase the statutory definition of "cause" found in section 402(b)(1)(C)(iii) of the Act, EPA has revised this paragraph to be consistent with the Act.

Proposed § 122.31(d)(4) stated that "information indicating the permitted discharge poses a threat to human health or welfare" constituted cause for permit modification or revocation. While some commenters thought this paragraph exceeded EPA's statutory authority, other commenters stated that this provision was consistent with EPA's authority under section 402(k) of the Act. Because EPA concurs with the latter comments and believes that such a provision is consistent with the Act, paragraph (d)(4) is retained as a final regulation. In response to comments suggesting that the "human health or welfare" provision should be "cause" only to modify a permit to make it more stringent, and in keeping with EPA's decision to allow permit termination only in certain limited circumstances, EPA has placed this "cause" under the section which authorizes termination of the permit in addition to modification or revocation and reissuance. Many commenters also felt that this paragraph should be limited to situations where there was a "substantial showing" or "verification" as to the likelihood of an adverse impact on human health. EPA has not adopted these suggestions but points out that the permittee remains free to challenge the existence of a threat to human health or welfare in any proceeding to modify, revoke and reissue, or terminate a permit.

Proposed § 122.31(d)(5) indicated that a discharger's failure or refusal to allow authorized representatives of the permit issuing authority to enter, inspect, or copy materials on the premises as provided in proposed § 122.14(f) constituted cause for permit modification or revocation. Many commenters suggested deletion of this provision because failure to allow such entry, inspection, or copying was a cause for enforcement action under sections 308 and 309 of the Act. Other commenters stated that the provision was inconsistent with the Supreme Court's decision in *Marshall* v. *Barlow's Inc.*, 436 U.S. 307, (1978). In response, EPA has deleted proposed § 122.31(d)(5). Proposed § 122.14(f) was also revised in response to comments. See discussion of § 122.14(f).

§ *122.31(e)*—Proposed § 122.31(d)(6) (now § 122.31(e)(1)) indicated that material and substantial alterations or additions to the discharger's operation constituted cause for permit modification or revocation. In response to comments requesting clarification as to what constitutes "material and substantial alterations or additions," a parenthetical cause has been added to indicate that such change includes situations covered by § 122.14(e) which requires a new permit application.

Some commenters asked under what circumstances would proposed § 122.31(d)(7), now § 122.31(e)(2), be used? Section 122.31(e)(2) might be appropriate if a permit misapplied State water quality standards (in effect at the time of permit issuance) and only secondary treatment was necessary. This section could be used to modify the permit to reflect the proper level of treatment. In addition, § 122.31(e)(2) has been revised to indicate that it can be used for revising more than effluent limitations, e.g., monitoring requirements.

Proposed § 122.31(d)(8) (now § 122.31(e)(3)) indicated circumstances under which revision or withdrawal of EPA promulgated effluent limitations guidelines constituted cause of permit modification or revocation. Many commenters objected that the requirement to file a modification request within ninety (90) days after the Federal Register notice of withdrawal or revision was unreasonable, particularly since the scope of the relaxed guideline or standard may not be known. EPA continues to believe that Federal Register notice is appropriate and adequate and that 90 days is sufficient time for a discharger to determine the scope of the revision or withdrawal.

Several commenters suggested that withdrawal or revision of Water Quality Standards of EPA promulgated interim final effluent limitation guidelines should also constitute cause for permit modification. EPA agrees with these commenters and has revised § 122.31(e)(3) accordingly.

Other commenters suggested modifications should be allowed to make a permit less stringent, when the permit was issued based upon section 402(a)(1) of the Act and the pemit limitations are more stringent than subsequently promulgated effluent guidelines. EPA cannot allow modification to make a permit less stringent under these circumstances since a less stringent modification would constitute unwarranted "backsliding" in pollution control. See *U.S. Steel* v. *Train*, 556 F.2d 822, 846 (7th Cir. 1977). Paragraphs 122.15(i)(1), (2) and (3) lists the only exceptions to this principle.

A few commenters thought there was no need to modify a permit when EPA-promulgated effluent guidelines limitations were withdrawn, revised, or judicially remanded (see proposed § 122.31(d)(8) and (9), now § 122.31(e)(3) and (4)) since the guidelines were no longer applicable or enforceable. These comments indicate a fundamental misconception as to the enforceability of individual permit terms and conditions; permit terms and conditions remain enforceable unless and until they are modified, revoked, or judicially or administratively stayed.

Several commenters objected to proposed § 122.31(d)(11), (now § 122.(e)(6)) which indicated by reference to proposed § 122.14(d) and § 122.15(b) that promulgation of effluent standards limitations or prohibitions under sections 307(a), 301(b)(2)(C) and (D) and 304(b)(2) of the Act constituted cause for permit modification or revocation. Since that paragraph incorporated the requirements of former 40 CFR § 124.46, that requirement has not been changed. However, two additional cross references to § 122.17 (causes for modifications to schedules of compliance) have been added for completeness.

Proposed § 122.31(d)(12), stated that failure of the permit "to apply any applicable standards or limitations" constituted cause for permit modification or revocation. Many commenters objected to that paragraph as unfairly penalizing the permittee for failure of the permit issuing authority to write the permit properly. Other commenters indicated that any attempt to apply limitations or standards which were not in effect at the time of permit issuance constitutes unauthorized overreaching by the permit issuing authority. EPA has carefully considered these comments in light of section 402(k) of the Act and has concluded that, except as provided in § 122.31(e)(7), a permit should not be modified to incorporate new standards or limitations. Accordingly, EPA has deleted that paragraph.

Proposed § 122.31(d)(13), defined cause to include "other circumstances . . . [which] have materially and substantially changed since the permit was issued." Several commenters suggested that this subsection was either too vague or too expansive and should, therefore, be deleted. Although it was not intended that this paragraph be used as a carte blanche to allow permit modifications, EPA understands and partially agrees with the fears of some commenters that this paragraph could be so used. Accordingly, that paragraph has been deleted.

§ *122.31(f)*—Proposed § 122.31(e) (now § 122.31(f)) listed six uncontested actions amending minor provisions of an effective permit that were not subject to the usual procedures of notice and opportunity for hearing unless the modification would render the permit less stringent. Several commenters thought that it was inconsistent to allow only more stringent modification without public notice and an opportunity for hearing and not to allow less stringent modifications in that same manner. EPA believes that a requirement for public notice and opportunity for a hearing for less stringent modifications is necessary, since the public has a right to know of any permit modifications which would render a permit less stringent and could, therefore, adversely affect the environment. The only person who would be affected by a more stringent modification is the permittee and the permittee receives notice of and retains the right to contest any more stringent modifications. If the permittee contests the modification, § 122.31(f), by its terms, is not applicable and the requirements of Part 124 come into effect.

Several commenters suggested that a permit modification to require less frequent monitoring or reporting should be an insignificant modification under § 122.31(f). Since less frequent monitoring or reporting would render a permit less stringent, EPA, for the reasons stated above, believes public notice and an opportunity for a hearing is required.

Other commenters suggested various changes to proposed § 122.31(e)(3) (now § 122.31(f)(3)) to allow more than the proposed 120 days slippage not only for interim compliance dates but also for final compliance dates. An extension of the final compliance date clearly renders the permit less stringent and therefore EPA has not made the suggested changes. EPA further believes that a slippage of more than 120 days in an interim compliance date would, in most cases, interfere with the attainment of a final compliance date. In the development of the *Interim National Municipal Policy and Strategy* EPA carefully considered the effect of the Construction Grants process on the achievement of interim compliance dates by municipal permittees. EPA concluded that 120 days slippage in interim compliance date is sufficient to accommodate the Construction Grants process and that, with careful grants management, EPA is hopeful that even slippages of 120 days will not occur in the future.

*§ 122.41 Disposal of pollutants into wells, into publicly owned treatment works, or by land application.*

Proposed § 122.41(a) requiring State permits for the disposal of pollutants into wells has been moved from Part 122 to Part 123 because it is applicable solely to NPDES States.

*§ 122.41(a)*—One commenter recommended that disposal of wastes by land application, as well as by well injection or routing to a POTW should be included in § 122.41. EPA agrees, and this change has been made.

A number of commenters objected to the provision in proposed § 122.41(b) (now § 122.41(a)) requiring adjustment of effluent limitations for discharges into surface waters where a portion of raw waste is injected into a well. These commenters argued that the adjustment provision is inconsistent with *Exxon Corp.* v. *Train*, 554 F.2d 1310 (5th Cir. 1977), and further that EPA should defer to Subpart C of the Safe Drinking Water Act, which establishes controls over well injection.

EPA believes that these commenters have misconstrued the purpose and scope of proposed § 122.41(b) (now § 122.41(a)). The provision does not regulate well injection, directly or indirectly, nor does it place any limit on the amounts which may be injected, the rates of injection, or the design and operation of injected wells. Instead, §122.41 focuses on the remaining wastes which are being discharged into waters of the United States. The purpose of the regulation is to ensure that the Act's treatment requirements are met for discharges into surface waters. Unless adjustment is made in calculating effluent limitations, dischargers using wells, POTWs, or land application for part of their wastes would get treatment "credit" for pollutants so disposed and thus escape application of technology-based requirements to the portions of the wastes disposed to waters of the United States.

Several comments noted that the formula as published in the proposed rules is incorrect and inconsistent with EPA's examples in the preamble. EPA agrees, and has modified the final rules to incorporate the correct method of calculation. This method may be algebraically expressed as:

$$P = E \times \frac{N}{T}$$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.

Several commenters noted that strict application of the formula would allow a discharger to inject concentracted wastes into a well and discharge relatively dilute wastes to surface water with little or no treatment. The last sentence in proposed § 122.41(b) was intended to cover this situation. That sentence allows adjustment of the effluent limitations derived from the formula as necessary to account for changes in "character or treatability" of the wastes disposed into navigable waters. Permit issuing authorities should devise appropriate methods of adjustment in each case, based upon a finding that the wastes being discharged into surface waters are "fundamentally different" from those considered in issuing effluent guidelines. These variances will be controlled by Subpart D of Part 125.

A new paragraph (§ 122.41(a)(1)) has also been added to cover the situation where EPA-promulgated effluent guidelines provide separate standards for a discharge of wastes from a particular process and all wastes from that process go to wells, land application, or POTWs. Such separate process standards would not be used to calculate permit limits.

*§ 122.42 Concentrated animal feeding operations.*

Proposed § 122.42 subjected concentrated animal feeding operations to individual permits coverage and all other animal feeding operations to general permit coverage. Many commenters objected to EPA's blanket coverage of all animal feeding operations, arguing that many smaller animal feeding operations are not point sources. These commenters also added that such operations were adequately covered by the section 208 planning process. EPA has reconsidered its position and agrees that not all animal feeding operations are point sources and thus subject to permit requirements.

EPA is, therefore, withdrawing the proposed revision; and the final regulations reflect the requirements found in former § 124.82 and § 125.51. Thus, only concentrated animal feeding operations will be subject to individual permits and general permits will not apply to other animal feeding operations.

*§ 122.43 Concentrated aquatic animal production facilities.*

Many commenters objected to this proposal which subjected concentrated aquatic animal production facilities to individual permit coverage and all other aquatic animal production facilities to general permit coverage. In addition, commenters objected to the provisions for case-by-case designation of certain aquatic animal production facilities as concentrated aquatic animal production facilities, and therefore, subject to individual permits.

As discussed in § 122.42, EPA is withdrawing the proposed revision regarding general permits. The final regulation concerning permit coverage is similar to former 40 CFR § 124.1(u) and § 125.1(ii) requiring only individual permits of concentrated aquatic animal production facilities. However, EPA believes that some aquatic animal production facilities that may not be classified as concentrated under the formula, nevertheless, may be significant contributors of pollution. Because of this, EPA is retaining the provision for case-by-case designation of concentrated aquatic animal production facilities. EPA is revising this to include the following language suggested by one commenter: "In no case shall a permit application be required from a concentrated aquatic animal production facility designated under (the case-by-case provision) until there has been an on-site inspection of the facility and a determination that the facility should and could be regulated under a permit program."

Commenters also objected to combining warm and cold water aquatic animal production facilities and the 9,090 kilograms (approximately 20,000 pounds) of aquatic animals per year cut-

off. In response to these comments, aquatic animal production facilities are now differentiated in the regulations based on whether they produce warm or cold water species and the characteristics of the method of confinement. Warm and cold water production facilities are separated because of basic operational characteristics differences. Cold water aquatic animal production facilities, where concentrated feeding and continuous flow occur, discharge organic pollutants at a rate related to the amount of food fed and the total weight of the animals produced. Small facilities of this type, however, (such as "fishout" ponds and farm ponds) produce negligible amounts of pollution. For this reason a facility which produces less than 9,090 harvest weight kilograms (approximately 20,000 harvest weight pounds) of aquatic animals per year and feeds less than 2,272 kilograms (approximately 5,000 pounds) of food during the month of maximum feeding, is not required to have an NPDES permit unless so required on a case-by-case basis (see § 122.43(c)).

In most cases warm water aquatic animal production facilities differ in construction and operation from cold water facilities. If the discharge from a warm water operation takes place for less than 30 days per year or only during periods of excess runoff, no NPDES permit is required. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 harvest weight pounds) of warm water aquatic animals per year are also exempted. The 45,454 kilogram figure will apply to warm water aquatic animal production facilities. If sufficient information is submitted to EPA to substantiate a higher figure, EPA will consider amending this section.

Finally, EPA has deleted the non-native fish restriction found in proposed § 122.43(b)(1). Although this restriction was taken from the former regulations, an overwhelming number of commenters objected to the restriction because of its indirect effect on research, sport fishing, and fish management and, generally, because it exceeded EPA's statutory authority. Since EPA agrees that a native/non-native fish distinction bears little relation to the quality of the discharge, this distinction was deleted.

§ *122.45 Separate storm sewers.*

On February 4, 1977, the EPA published a proposed rule to establish an NPDES general permit program for irrigation return flows and separate storm sewers (see preamble discussion of § 122.48 *General Permit Program).* The February 4, 1977 proposed definition of "separate storm sewer" was the same as defined in former 40 CFR § 125.52. In the August 21, 1978 proposal, EPA redefined "separate storm sewer" to mean "a conveyance or system of conveyances (including but not limited to pipes, conduits, ditches and channels) primarily used for collecting and conveying storm water runoff." This definition differed from the February 4, 1977 definition, in that the February 4, 1977 proposal required the sewer to be located in an "urbanized area" or otherwise be found to be a significant contributor of pollution. The August 21, 1978 proposal also introduced the concept of case-by-case designations of "concentrated" storm sewers and indicated that concentrated storm sewers require individual permits.

In response to comments objecting to the case-by-case designation of concentrated separate storm sewers and the deletion of the "urbanized area" requirement for separate storm sewers, EPA has returned to the definition of separate storm sewer proposed in February 4, 1977, i.e., the sewer must be located in an urbanized area to be a separate storm sewer and there will be no case-by-case designations of a different category of sewers known as "Concentrated" storm sewers. A conveyance or system of conveyances not located in an urbanized area, can, as proposed in the February 4, 1977 rule, be designated a significant contributor of pollution and be considered a "separate storm sewer" subject to permit requirements. Likewise, under § 122.48(e) concerning general permits, the permit issuing authority can require that sources otherwise subject to a general permit obtain an individual permit. This case-by-case designation is similar to the February 4, 1977 proposal.

A comment has also been added which indicates that the designation of separate storm sewer under this section has no bearing on whether the source is or is not a separate storm sewer for purposes of funding under Title II of the Act. This comment was added to prevent any possible confusion between these regulations and the Title II regulations.

§ *122.46 Silvicultural activities.*

Proposed § 122.46 restated the former definition of "silvicultural point source" (40 CFR § 124.85(a) and § 125.54(a)) and introduced the concept of case-by-case designations of silvicultural activities as point sources. Many commenters objected to the case-by-case designation of point sources arguing, among other things, that such designations would negate the section 208 planning process, that the criteria for designations were too vague and that the designation of any additional silvicultural point sources should be through rulemaking procedures. EPA has considered these comments and determined that the four silvicultural point source activities defined under § 122.46(a) (rock crushing, gravel washing, log sorting, and log storage) are sufficient under NPDES because most water pollution from forest management areas is non-point in nature and hence not subject to NPDES. EPA accordingly has deleted all reference to case-by-case designation of silvicultural point sources.

§ *122.47 New sources and new dischargers.*

§ *122.47 (a) and (b)*—Two commenters pointed out that proposed § 122.47 (a) and (b) did not address the question of whether a mobile drilling rig which relocates requires an EIS upon relocation. The final regulations continue to track the language of section 306(a)(5) of the Act which defines construction to include "any placement, assembly or installation of facilities and equipment . . . at the premises where such equipment will be used," without interpreting this language in the context of mobile drilling rigs. It should be noted that, at present, no new source performance standards have been promulgated for mobile drilling rigs; thus, no mobile drilling rig may be considered a new source at present. The Agency intends to examine the EIS issue at the time that it promulgates new source performance standards for these sources.

§ *122.47(c)*—Several commenters remarked that State-issued permits to new sources should require EIS's under proposed § 122.47(c)(1)(ii). Other commenters disagreed. It is clear, however, that the issuance of a permit by a State is not a major Federal Action. *Chesapeake Bay Foundation* v. *United States* (E.D. Va. June 28, 1978). Therefore, EPA has not changed this statement.

Several commenters objected to the requirement in proposed § 122.47(c) (2) and (3) that the Regional Administrator must accept the EIS recommendations and deny or condition permits in accordance with such recommendations. They argued that the EIS is only a recommendation and that it is the Regional Administrator's duty to evaluate the recommendation and make permit-related decision accordingly. EPA agrees with the thrust of these comments, and the regulation has been redrafted to reflect them.

Many commenters disagreed with the provision of proposed § 122.47(c) (4) and (5) which would bar construction prior to issuance of a permit or negative declaration. However, EPA believes that it is implicit in the requirement of section 511(c) of the Act and of the National Environmental Policy Act (NEPA) that the expected environmental impacts studied in the environmental impact assessment should not be allowed to proceed until that assessment has been concluded. This has consistently been the Agency's position (see former 40 CFR § 6.906, published in 42 FR 2454 (January 11, 1977)) and has recently been reinforced in NEPA regulations published by the Council on Environmental Quality (43 FR 55478, November 29, 1978). Therefore, the position is retained in these final regulations. It should be noted that subparagraph (c)(4) allows the Regional Administrator to approve construction prior to issuance of a permit or finding of no significant impact (i.e., a negative declaration) if he or she determines that such a finding will probably be made.

§ *122.47(d)*—Several commenters pointed out under proposed § 122.47(d)(1)(ii) that construction often creates construction-related discharge and that the 10-year protection period for new source performance standards should not begin at the time of such discharges. Accordingly, the regulations have been modified to trigger the period at the time of discharge only in the case of process or other non-construction related discharges.

The interpretation of section 306(d) has been a vexing legal problem for EPA since the enactment of the 1972 Amendments to the Clean Water Act. That provision grants to a qualifying source meeting "all applicable standards of performance" a ten-year immunity (or immunity during the period of amortization of pollution control facilities, if shorter) from "any more stringent standard of performance." The term "standard of performance" is defined in section 306(a)(1) in such a way as to make it clear that it refers only to new source performance standards issued by the Administrator. Thus the literal effect of section 306(d) is to give a new source a ten-year protection only from more stringent new source performance standards, and not from more stringent BAT, BPT, or BCT effluent limitations.

Reading this provision of the statute literally would make it meaningless, a result Congress could not have intended. New source performance standards are periodically revised to incorporate new designs and in-process changes which can only be incorporated into a new plant when it is first built. If the statute is applied literally, after the protection period expires a new source would have to comply with any revised new source performance standards, some of which might be achievable only by a plant which was designed and constructed from the ground up so as to meet them.

On the other hand, reading the term "standard of performance" (in its second use in section 306(d)) to refer to all technology-based standards not only does violence to the language of the Act (by requiring the same statutory term to have two different meanings in the same sentence and by failing to track the definition in section 306(a)(1)), but also seriously interferes with Congress' command in the 1977 Amendments that technology-based standards for toxic pollutants be expeditiously achieved.

In the proposed regulations EPA sought to deal with these problems of interpretation by construing the protection afforded by section 306(d) to apply only to "more stringent" technology-based effluent limitations controlling the same pollutants as are controlled by the applicable standards of performance. In other words, if the NSPS only limited pollutants A and B, EPA could later impose technology-based effluent limitations for pollutants D and E, but could not impose more stringent technology-based limitations on A and B.

A number of commenters objected to this proposal, arguing that section 306(d) should be read to afford new sources protection against any additional requirements during the protection period. EPA agrees that the protection provided by the proposed regulations should be broadened, although not to the extent suggested by the commenters. Accordingly, the Agency has invoked its rule-making authority under section 501(a) of the Act to fashion an interpretation of section 306(d) that gives the greatest effect possible to the language of the statute in light of congressional purposes. This construction has two principal features. First, it extends the protection afforded by section 306(d) not only to new source performance standards, but to all technology-based requirements under section 301 (BPT, BCT, and BAT). Second, the protection is not extended to toxic pollutants controlled by applicable BAT regulations, but not by the new source performance standards. (The proposed regulations would have exempted from 10-year protection conditions controlling any pollutants not controlled by the applicable new source performance standards.)

In this way, EPA has sought to implement two conflicting congressional goals. On the one hand, new sources must be given some meaningful protection for ten years after construction. Section 306(d) should not be ignored. On the other hand, the purpose of the new provisions of the Act controlling toxic pollutants must not be frustrated by allowing new sources which meet old new source performance standards based on traditional pollutants such as BOD and suspended solids to escape application of BAT controls on toxic pollutants.

A number of commenters suggested that the section 306(d) protection period apply to State water quality standards and other requirements not based on technology. EPA has not adopted these proposals because the term "standard of performance" clearly refers to a technology-based standard. (See section 306(a)(1) of the Act.) Moreover, an earlier version of section 306(d) adopted by the House would have provided protection from any effluent limitation, whether technology-based or water-quality-based. (See FWPCA Legis. Hist. at 965–66.) But the version adopted by the conferees and ultimately enacted provided protection only from "standards of performance." The shift clearly indicated an intent to narrow the type of "standards" from which protection is granted.

In response to comments objecting to the limitation of the protection period to pollutants actually controlled by the standard of performance, § 122.57(d)(2)(ii) allows imposition of a more stringent technology-based effluent limitation during the protection period only if it controls a toxic pollutant. This revision will allow the imposition of additional controls over pollutants which are neither hazardous nor toxic where such control has been specifically identified as necessary to indirectly control toxic pollutants. EPA's present strategy for controlling toxics will involve such indirect regulation in many instances. This best accommodates the purposes of the 1977 Clean Water Act amendments. Congress intended for EPA to shift its focus from the regulation of conventional pollutants to a new program for applying technology-based requirements to toxic pollutants. Under the Act as amended, toxic pollutants are treated separately from less hazardous materials. Section 307(a), as amended in 1977, requires EPA to establish for toxic chemicals either effluent limitations based on the 301(b) criterion of best available

technology economically achievable, or a national standard under section 307(a) itself based on the toxicity of the substance and designed to provide an "ample margin of safety."

The policy of Congress was clearly to control toxic chemical pollution as quickly and as effectively as possible. See *CWA Legis. Hist.* 427–29 (remarks of Senator Muskie). The addition of the new BAT standard for toxic pollutants was intended not to make toxic controls less effective than they would have been under section 307(a), but to allow EPA to use the regulatory mechanisms of section 301(b) when they would be more efficient than those under section 307(a). In light of the expressed intent of Congress to expedite the control of toxic pollutants, EPA believes that the intent of the Act would be ill served by a policy of exempting classes of sources from compliance with toxic controls for ten years, where the Act can be interpreted not to provide such an exemption.

Finally, the protection period will not extend to permit conditions controlling hazardous substances under section 311 of the Act. This exception is intended to carry out the purposes of the 1978 amendments to section 311 of the Act. Those amendments excluded from control under section 311 discharges which are controlled by the permit system under section 402. The legislative history of that provision, though brief, shows that Congress intended for any exemption from section 311 to depend upon the availability of effective control under section 402 of the hazardous substance discharges. Thus, for example, Congressman Breaux, one of the sponsors of the 1978 amendments, said:

> At the present time many industrial point sources have section 402 permits which do not identify or provide for the regulation of designated hazardous substances. Section 311(a)(2) would be amended to provide these sources a reasonable opportunity to identify the constituent elements of their effluent, to develop treatment and management procedures and to apply for a new permit without being liable for section 311 penalties. *Cong. Rec.* (daily ed.) at 13599, October 14, 1978.

New sources should have this same opportunity to apply for a permit that reflects consideration of hazardous substance discharges, and these regulations now accord that opportunity.

Several commenters pointed out that under proposed § 122.47(d)(4) the maximum of a 60-day "start-up" period was insufficient for new sources to meet all permit conditions. One example given was the case of biological oxidation ponds in cold weather. As a result, the time limit has been extended to 90 days.

§ *122.48 General permit program.*

On February 4, 1977, EPA published a proposed rule (42 FR 5846) to establish an NPDES general permit program for irrigation return flows and separate storm sewers. The proposed rule arose out of the decision in *NRDC* v. *Costle* (Runoff Point Source), which denied EPA's authority to exclude certain point sources from the permit program. The general permit program outlined a system whereby similar activities in a given geographic area would be covered by a single general permit. The program was intended to provide administrative flexibility in dealing with numerous minor discharges subject to the same limitations.

Approximately 40 comments were received on the proposed regulations during the overall comment period, ending April 1977. Many of these comments addressed problems associated with irrigation return flows. However, after the proposal Congress excluded irrigation return flows from the permit requirements (see section 502(14) of the Act). Accordingly, EPA has exempted those discharges from both individual and general permit coverage, see § 122.4(a)(4).

The August 21, 1978 proposal reserved § 122.48 for the general permit program. Based on comments on the original general permit proposal and the August 21, 1978 proposal, EPA has made several revisions as noted below.

First, as indicated in § 122.48(b), the general permit program is limited to certain types of point sources. While the original general permit proposal covered only separate storm sewers and irrigation return flows (now exempted), comments addressing the administrative flexibility of the approach have prompted us to authorize the use of general permits for other categories of points sources with minor discharges located in the same geographic area. All draft general permits for other categories of points sources must be sent to the EPA Deputy Assistant Administrator for Water Enforcement for a 90-day review (see §§ 123.22, 124.32(a) and the Comment to § 122.48(a)(2)).

Some commenters misinterpreted the proposed regulations and though that EPA was requiring States to use general permits. It should be noted that the general permit program is optional. States (and EPA) retain the right to require individual permits for any and all point sources.

A few commenters were confused as to the proposed timetable for establishment of a general permit program for separate storm sewers which varied depending on whether the permitting authority is a State or EPA. In response, EPA has decided to drop the deadline requirement for submitting a separate storm sewer general permit program. Since the requirements for State general permit programs have been placed in § 123.12, a more in-depth discussion of State requirement can be found in the preamble discussion of that section.

The proposed general permit regulations listed geographic areas which may be appropriate for the issuance of general permits to storm sewers, including political or geographical boundaries. Based on several comments, the final regulations have been revised to include boundaries designated by roads in a State highway system as a geographical area.

Several commenters addresed the procedural aspects of general permit issuance established in the proposed regulations, particularly, public notice. These issues are now covered under Part 124 and have been subject to renewed opportunity to comment in the August 21, 1978 proposal. Although commenters felt the Agency should individually send notice to permittees covered by a general permit, EPA believes that such system would be unwieldy and that **Federal Register** notice, or other appropriate notice in the case of State issued general permits, is sufficient (see § 124.41(f)).

The original February 4, 1977 proposed general permit terms and conditions have been deleted because they would be duplicative of the provisions in § 122.14 and § 122.15 (permit terms and conditions). Since these sections are more detailed than the general permit proposal, they address the concerns of commenters that proposed general permit terms and conditions were vague and overbroad. Any concerns about unreasonable permit conditions are adequately addressed by a discharger's right to request an individual permit and then request a hearing under Part 124.

Some commenters were confused about the use of best management practices (BMPs) as general permit terms and conditions, including questions on how best management practices would be developed. The use of BMPs for separate storm sewers is of particular importance since "end-of-pipe" effluent limitations may not be the most appropriate means of control. As indicated in the preamble discussion of

BMPs, they may be imposed in general permits under a variety of authorities. To summarize briefly, BMPs may be imposed in general (or individual) NPDES permits, where: uniform numeric effluent limitations are infeasible, in accordance with *NRDC* v. *Costle* (Runoff Point Sources); BMPs are mandated under section 304(e) of the Act to control toxic and hazardous pollutants from ancillary industrial activities; BMPs are "appropriate requirements" related to the achievement of effluent limitations, pursuant to section 402(a)(2) of the Act; BMPs are a condition of State certification for an EPA-issued permit under section 401(d) of the Act; BMPs constitute a more stringent limitation established pursuant to State law or regulations under section 301(b)(1)(C) of the Act; BMPs are required pursuant to the National Environmental Policy Act, where an Environmental Impact Statement (EIS) has been prepared; and BMPs are necessary to assure consistency with a State water quality management plan pursuant to section 208(e) of the Act. (See § 122.15(g).)

A number of commenters noted some problems with the provisions related to revocation of a general permit and issuance of an individual permit to a particular discharger. As a result, the provisions have been redrafted, with several major changes in the final regulations. First, interested persons can request that a general permit be revoked and an individual permit required for a particular permittee. A permittee is adequately protected against arbitrary action in this regard under the procedural safeguards of Part 124. Second, rather than requiring general permit modification, the revocation of a general permit and the issuance of an individual permit now automatically modifies the general permit's applicability to the individual permittee. Public notice and opportunity for comment on the modification of the general permit for this purpose (i.e., solely reflecting a change in covered permittees) is not necessary because public notice will be given of the new individual permit for the permittee. Third, individual permittees can request to be covered by the general permit, and vice versa. In a related vein, a few commenters suggested that a person covered by a general permit should be excluded from general permit coverage where an individual permit is requested, and left unpermitted pending a decision on the individual permit request. This suggestion has not been taken, since it runs contrary to the pollution control goals of the Act and EPA's policy on permit modification and revocation and reissuance.

Finally, EPA has rejected some changes recommended by commenters as inconsistent with the Act's requirements, e.g., general permits may not be issued for terms which exceed five years, and section 208 water quality management agencies may not be designated as permitting authorities for general permits.

*III. Part 123—State Permit Program Requirements*

A. *What Does This Part Do?* Section 304(i)* of the Act directs the Administrator to promulgate guidelines for State programs setting minimum requirements for State participation in the National Pollutant Discharge Elimination System (NPDES) permit program under sections 402, 318 and 405. Section 101(e) of the Act directs the Administrator to promulgate guidelines setting minimum requirements for public participation in the development, revision and enforcement of State programs approved pursuant to sections 402 or 404. This Part contains the guidelines required by section 304(i) and 101(e). In addition, this Part sets guidelines for State section 404 permit programs regulating discharges of dredged or fill material. The decision to include section 404 permit programs in this Part is based on the very close parallel between the statutory requirements for the NPDES and section 404 permit programs (e.g., compare section 402(b) with section 404(h)).

This Part also specifies the process for EPA approval of State programs and for revision of State programs (including any revisions to existing State programs necessary to conform to the Clean Water Act of 1977). Guidelines for EPA overview of State programs, including the requirement for a Memorandum of Agreement between the State and EPA, and the process for objection to proposed State NPDES permits are also incorporated into this Part.

Many of the substantive requirements for the operation of the NPDES program, whether administered by a State or EPA, are contained in Parts 122, 124 and 125. The provisions of those Parts are applicable to State programs only to the extent they are incorporated by reference into Part 123 (e.g., see § 123.12). Thus, if a provision of Part 122, 124 or 125 is not cross-referenced in Part 123 it is not directly applicable to State NPDES programs. For example, most of the requirements of Part 124 do not apply to States.

A person reading Part 122, 124 or 125 should be able to determine from the context whether the particular provision is applicable to State administered programs. Nonetheless, if any doubt exists Part 123 should be consulted to determine whether or not States must conform to the particular requirement in question. Where an applicable provision of Part 122 incorporates requirements from elsewhere in this Chapter it becomes a State program requirement. For example, § 122.20 is made applicable to State programs under § 123.12 and requires that NPDES permits include monitoring requirements. Under § 122.20(c) the testing done by permittees is required to conform to 40 CFR Part 136. Therefore, these Part 136 requirements are applicable to State programs.

Additional operational requirements of State section 404 programs will be proposed in the near future as part of the "consolidated regulations". These will closely parallel the requirements of Parts 122 and 124 which are applicable to State NPDES programs. Until the remaining requirements to State section 404 programs are proposed, States should seek guidance from Parts 122 and 124, from regulations promulgated by the Corps of Engineers and directly from EPA.

The provisions of Part 123 (including the applicable sections of Parts 122, 124 and 125) are *minimum* requirements and the States are free to impose more stringent requirements at any time. Thus, in the final example of the preceding paragraph, the State is free to ignore the EPA-promulgated effluent guideline if it chooses to impose more stringent effluent limitations than EPA requires under 40 CFR Subchapter N.

B. *How Does This Part Relate to Existing Regulations?* Prior to the promulgation of these regulations the operational requirements for State NPDES programs were contained in former Part 124 and former Part 105 (Public Participation). The process for approval and revision of State programs was developed and contained in EPA policy memoranda and informational communications. The approval and revision process contained in this Part is merely a codification of existing requirements and does not represent any change in these processes.

The public participation guidelines of Part 105 were recently replaced with a revised set of guidelines under Part 25. In doing this EPA decided to remove

*The provisions of section 304 were redesignated as a result of the Clear Water Act of 1977. What is now designated section 304(i) was formerly section 304(h). Congress failed to make corresponding changes to section 402. Cross references in section 402 to section 304(h) should, therefore, be read to mean section 304(i).

State permit programs from the coverage of Part 25 and to incorporate the applicable public participation requirements for State programs into Part 123. This was done so all the major requirements for State programs are contained in one Part. In doing this EPA has incorporated most of the substantive provisions of Part 25 into Part 123 (in certain instances this is done by incorporation of applicable requirements of Part 124).

Public participation in the permit issuance process, pursuant to the requirements of section 101(e) of the Act, is fostered by the public notice requirement (§ 124.41), the statement of basis and fact sheet requirements (§§ 124.33 and 124.34), the public comment period and opportunity for hearing requirements (§ 124.42), and the response to comments section (§ 124.63), all of which are applicable to State NPDES programs.

A basic element of Congress' concern for public participation is to make use of a concerned public in identifying possible noncompliance with permit requirements. To this end Part 123 requires that all permit applications and all effluent data be made available to the public without restriction. All other information must be made available to the public unless shown to be confidential. (See § 124.131.) In addition, "quarterly noncompliance reports" and annual reports prepared under § 122.23 must be made available to the public. The availability of this data ensures that the public can monitor the performance of permittees.

Additionally, the regulations attempt to assure that possible violations identified by the public will be acted upon by the State. Section 123.31 requires that States establish programs to receive and review all evidence submitted by the public.

Finally, citizens have a right to directly initiate enforcement actions in Federal court pursuant to section 505 of the Act. That section also provides that citizens may intervene as a matter of right in any action in Federal court and, in many cases, recover attorney's fees.

C. *How Does This Part Relate to the August 21, 1978 Proposal?* The following is a discussion of the significant comments received and changes made to the August 21, 1978 proposal. Editorial changes have been made to all sections and are not discussed. There has also been a renumbering of the Part 123 sections. There are now fewer sections in Part 123 because a large number of the proposed sections were condensed into § 123.12.

*§ 123.1 Purpose and scope.*

Many comments suggested EPA should be allowed to complete the permit issuance process, after approving a State program, for those permits "in the pipeline" at the time of program approval. While this approach has merit it cannot be adopted because section 402(c) of the act precludes permit issuance by EPA after the date of approval of a State program. See *Central Hudson Gas and Electric Corp. v. EPA*, 587 F.2d 549 (2nd Cir. 1978). However, EPA will endeavor to avoid these problems, to the extent possible, whenever the transfer of program authority is pending.

In an effort to clarify the status of Federally issued permits after program approval a new paragraph has been added, §123.1(d). It provides that EPA or the Corps (in the case of section 404 programs) retains jurisdiction over Federally issued permits for all purposes until they expire, unless arrangements are made with the State for the State to assume responsibility for administering permits issued by the Federal Government. This retention of jurisdiction may be extended beyond the expiration date of the permit, with the agreement of the State, for the purpose of resolving an ongoing issue, such as an adjudicatory hearing or permit modification request.

Many commenters opposed the provisions in § 123.1 and § 123.62 (proposed § 123.102) which link the permit programs under sections 318 (aquaculture) and 405(a) (disposal of sewage sludge) to the section 402 permit program. These comments suggested that such a linkage is not authorized by law and would impose an additional burden on NPDES States. However, the Clean Water Act of 1977 specifically amended section 318 and 405 to provide that permits issued under these sections are NPDES permits. In light of the prohibition against partial program approval requiring that all elements of the NPDES program be administered by the State, State programs must now include the activities specified in sections 405 and 318.

To avoid any confusion, the language in § 123.1 and § 123.62 has been clarified. A preliminary review of State programs indicates that most existing NPDES States have adequate authority to control the discharges specified in sections 318 and 405(a). Therefore, the requirement that States have authority for controlling these discharges should not impose an additional burden. EPA will assume that existing State programs have the necessary authority and are authorized to implement sections 318 and 405(a). Any State which lacks authority should contact EPA and take whatever action is necessary to modify its program to conform.

Another new provision has been added to this section (§ 123.1(f)) which specifies that the public participation guidelines of section 101(e) are now incorporated into Part 123.

*§ 123.2 Definitions.*

Four new definitions have been added, i.e., "draft permit," "proposed permit," "Memorandum of Agreement," and "State/EPA Agreement." These definitions conform to existing practice and do not represent any new or changed requirement.

A draft permit is the document prepared by the Director after tentatively determining to issue a permit to an applicant. This draft permit is then put on public notice and circulated in accordance with the applicable sections of Part 124. A fact sheet on the draft permit may be required. A statement of basis is required whenever a fact sheet is not prepared.

After the close of the comment period, the Director analyzes all the information submitted on the draft permit and arrives at a final determination to issue a specific document as a final permit. Where EPA has not waived the right to review the permit, this final determination is subject to EPA review in accordance with § 123.23 before it can become finally effective. The State Director's final determination is sent to EPA as a "proposed permit" in accordance with the Memorandum of Agreement. The State Director may issue the proposed permit as soon as EPA concurs with the proposed permit, or the time for EPA review expires. No proposed permit is required under these regulations whenever EPA has waived its right to review (See §§ 123.23 and 123.7).

The definitions of Memorandum of Agreement and State/EPA Agreement were added to provide clarity. There were several comments questioning the relationship between these two documents. See the preamble discussion of § 123.7 for a discussion of this relationship.

*§ 123.3 Elements of a program submission.*

A new section (§ 123.3) has been added to clarify and identify all requirements of a program submission in one section. With respect to State program forms, EPA is now more specific as to which State forms it will review (i.e., the permit form and the

permit application form(s)). States will be required to use a standard Discharge Monitoring Report (DMR) form developed by EPA. These forms will be printed by EPA and supplied to States on request. States may, however, substitute their State Agency's name, address, logo, and other similar material for EPA's on the forms. They are designed to be read and analyzed by computer. EPA will supply the computer software associated with the standardized DMR to States as requested.

The use of standard national forms is specifically provided for in the Act (section 304(i)) and enhances EPA's ability to assure a degree of national uniformity of the program. Many comments were received from national companies requesting EPA to standardize all forms. However, the Agency believes that DMRs are the only forms which should be standardized now.

*§ 123.4 Program description.*

Several comments were received on proposed § 123.3 objecting to the prohibition against allowing more than one State agency to issue section 404 permits. Most of these comments suggested that this is inconsistent with the efforts of several States to provide "one-stop" permitting authorities covering certain activities (e.g., power plant siting councils). EPA disagrees with these comments and believes that it is important to have this permitting authority in one State Agency.

*§ 123.5 Memorandum of Agreement with Secretary for section 404 programs.*

This requirement was proposed as § 123.3(b) (the program description section) but has been made into a separate section for clarity. Some of the proposed requirements of this section have been eliminated or modified in response to comments. For example, joint processing agreements, while encouraged, are not required. Likewise, the State need not await the completion of a environmental impact statement by the Corps before permit issuance. The most important feature of this Memorandum of Agreement (MOA) is in paragraph (a) and remains unchanged. This requires a delineation of section 404 permitting responsibilities for waters of the State consistent with section 404(g)(1) of the Act.

*§ 123.6 Attorney General's Statement.*

Section 402(b) of the Act requires that the State Attorney General certify that the State have adequate legal authority to implement the requirements of the NPDES program. Where the State program has independent legal counsel, such counsel may submit the statement in lieu of the State Attorney General. To qualify as "independent legal counsel" the attorney representing the State agency must have authority to independently represent the State agency in court on all matters pertaining to the State program.

Many comments indicated that the requirements of proposed § 123.4(c) were confusing insofar as that paragraph listed a number of sections of Part 123 which, in turn, cross-referenced sections of Parts 122 and 124 as being applicable to State programs. In order to eliminate this confusion, the sections of Part 123 which merely served to cross-reference sections of Part 122 and 124 have been consolidated in a new § 123.12 (see discussion below). Section 123.6(c) is now phrased to require a certification that the State has authority to implement the requirements of Part 123. EPA will continue its past practice of supplying States with a model Attorney General's Statement format.

While EPA has a legal duty to independently review State authorities, the Attorney General's Statement is given great weight in interpreting the requirements of State law.

*§ 123.7 Memorandum of Agreement with the Regional Administrator (MOA).*

The provision on scope of EPA waiver of review (proposed § 123.5.(b)) drew the most comments on this section and has be modified. The language in the regulations as proposed was based on existing Agency policy on waiver and, therefore, reflected what is presently found in MOA's with the NPDES States. As written, the provision on waivers broadens the scope of waivers available. This waiver of review is now very broad for non-process wastewater discharges; however, in some instances such a waiver is possible only with the prior approval of the EPA Deputy Assistant Administrator for Water Enforcement. On the other hand, EPA will not waive review of any general permits proposed by the State. The waiver provisions of this section only specify the maximum waiver available, and in some instances EPA may choose not to extend this maximum waiver to a State. This is particularly true for a State with a new program where EPA oversight is critical until the program becomes established and experienced.

The entire paragraph on the contents of the MOA (proposed § 123.5(c)) has been reorganized to reflect a more functional arrangement. The requirement that the agreement be reviewed and revised every three years (proposed § 123.5(b)) has been deleted on the basis of many comments suggesting that it was unnecessarily mechanical. Instead, MOA's should be reviewed and revised as necessary to reflect programmatic changes.

*Relationship between Memorandum of Agreement and State/EPA Agreement.* The State/EPA Agreement is an overall management tool which provides a way for the Regional Administrator and the State to coordinate and, to the maximum extent feasible, integrate programs administered by EPA and the State, emphasizing problem-solving approaches to specific environmental problems. The State/EPA Agreement reflects important decisions on environmental priorities, administrative problems, timing, responsibilities and allocation of resources. In FY 1980, the State/EPA agreement is to cover programs under the Clean Water Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act. Other environmental programs will be added to the process in following years.

The Memorandum of Agreement is a document signed by the Administrator and the State which formally sets forth the relationship between EPA and the State in the administration of an approved State permit program and details specific procedures that must be followed by both parties in the development, issuance, review, and enforcement of permits. The Memorandum of Agreement is the legal basis upon which EPA predicates its continuing decision that State issued permits are consistent with the requirements of the Clean Water Act and implementing regulations. Because of this, any proposed change to an MOA must be reviewed and approved by the Administrator to assure it is consistent with the requirements of Part 123.

The Memorandum of Agreement and the State/EPA Agreement should be consistent. This should not present a problem since they generally address different areas of the State/EPA NPDES relationship. The State/EPA Agreement should include the MOA. However, it may not override it in the instance of any inconsistency. If the State/EPA Agreement indicates that a change is needed in the MOA, the proposed change must be reviewed and decided by the Administrator.

*§ 123.8 Sharing of information.*

Many commenters raised concerns about the treatment of confidential information submitted to EPA or an NPDES State, particularly when the two

agencies share information. For example, when a State NPDES program is approved EPA gives the State the information in its files. A new § 123.8 has been added to specify how confidential information is treated under these circumstances. Persons interested in this area should consult 40 CFR Part 2 which is also applicable.

*§ 123.11 Requirement to obtain a permit.*

Proposed § 123.11(c), which specified which State has permit issuing authority for discharges into waters which form the boundary line between States, has been dropped.

*§ 123.12 Operational requirements.*

This is a new section which combines the requirements of proposed §§ 123.24, 123.21, 123.41, 123.42, 123.43, 123.44, 123.51, 123.52, and 123.61. Each of the proposed sections cross-referenced provisions of Parts 122, 124 and 125 as being applicable to State programs. Comments pointed out that this resulted in a great deal of confusion in understanding what is required of a State. Section 123.12 now combines, in a single section, all the cross-references. In addition, a person reading Parts 122, 124 or 125 should be able to determine, from the context, whether a particular section is applicable to State programs. In case of any doubt, however, § 123.12 is controlling.

It should be noted that, while all the provisions of § 123.12 are applicable to State programs, States need not have detailed State regulations on each provision. For example, as long as a State has adequate legal authority to implement § 123.22 (which indicates how information is submitted to EPA) and acts in accordance with § 123.22, it need not have a regulation which duplicates the Federal requirement. Again, States are always free to impose more stringent requirements than are included in these regulations.

*§ 123.12(a)(14)*—This section allows States to operate a general permit program. This section greatly modifies and simplifies the requirements for State general permit programs which were proposed at 42 FR 6846 (February 4, 1977); see preamble discussion of § 122.48. Of course, operating a general permit program is strictly optional. A State may choose to require individual permits in all cases. If a State chooses to issue general permits it is subject to the provisions of § 123.12(a)(14). This specifies that such permits shall be issued in accordance with § 122.48, and that they are subject to a full 90-day EPA review, including review by EPA Headquarters for all proposed general permits other than those for separate storm sewers.

*§ 123.13 Control of disposal of pollutants into wells.*

The requirement of this section was proposed in § 122.41(a) but was moved to § 123.13 since it is applicable only to State programs. Some commenters questioned EPA's authority to require States to control well disposal by permit. Section 402(b)(1)(D) of the Act specifically requires States to have this authority, although EPA lacks similar authority under the Act. See *Exxon Corp.* v. *Train*, 554 F.2d 1310 (5th Cir. 1977). NPDES States are urged to use the authority required by this section in developing and implementing an underground injection control program required under the Safe Drinking Water Act. The requirements of these two Acts are consistent and complementary. State UIC program regulations will be promulgated as part of EPA's consolidated regulations.

The requirement of § 122.41, that permit conditions for surface discharges be adjusted where a portion of the permittee's effluent is discharged underground, into a POTW or by land application, remains applicable to States.

*§ 123.22 Transmission of information to EPA.*

This section was proposed as § 123.23. Several commenters felt that EPA should provide the permit applicant with a copy of any comment, objection, or recommendation respecting a proposed State permit. EPA agrees and has incorporated such a requirement into § 123.22(a).

*§ 123.23 Objections to proposed NPDES permits.*

The requirements of this section were not included in the August proposal (Part 124, Subpart L was reserved for these requirements) but were included as a portion of the regulations promulgated at 43 FR 22160–22164, (May 23, 1978). EPA believes that the portion of those regulations dealing with EPA objection to State permits belongs in Part 123 where the other requirements for State programs are contained. Therefore, they will not be included in Subpart L to Part 124. In transferring the objection regulations into § 123.23, no substantive changes were made.

*Reviewability of Objections.* Although the Agency has not sought comment on the incorporation of the objection regulations into Part 123, and issue associated with these regulations is the availability of administrative and judicial review of EPA's decision to object to a permit.

An EPA objection is, in essence, a determination that certain conditions which are not included in a proposed State permit are necessary to carry out the requirements of the Clean Water Act. Section 402(d)(2) of the Act requires the Administrator, when he objects to the issuance of a permit, to state the reasons and to set forth the effluent limitations and conditions which the permit would include if it were issued by the Administrator. If the State fails to submit a revised permit (after any EPA hearing on the objection), the Administrator may issue the permit. All determinations underlying the objection are then subject to Agency review in accordance with Part 124 of these regulations. Under those regulations, contested provisions of the permit are stayed during Agency review. Thus, EPA's determinations do not affect the discharger until the administrative process is at an end and a final permit is issued.

Where EPA objected to a permit prior to the 1977 amendments to the Act, the Act made no provision for further action by EPA. The objection to the permit was the final Agency action, and the Act prohibited the State from issuing the permit objected to. In these circumstances, the Agency took the position that the objection was reviewable in the Court of Appeals as the Agency's action in "denying any permit" under section 509(b) of the Act. In general, the courts agreed. See, *Republic Steel Corp.* v. *Costle*, 581 F.2d 1228 (6th Cir. 1978); *Ford Motor Company* v. *EPA*, 567 F.2d 661 (6th Cir. 1977); *Mianus River Preservation Committee* v. *Administrator, EPA*, 541 F.2d 899 (2nd Cir. 1976); but see, *Washington* v. *EPA*, 573 F.2d 583 (9th Cir. 1978).

This resulted in a situation which the Senate Report on the 1977 amendments described as the:

> Impasse which may result when the Administrator objects to the issuance of a permit which is contrary to the provisions of the Act and the State is unwilling to issue a permit to the point source which is consistent with the provisions of the Act. Under the present Act, neither EPA nor the State may issue a valid permit in these circumstances. [*CWA Legis. Hist.*, Vol. 4 at 706.]

Accordingly, the Congress amended the Act to allow EPA to issue the permit after an objection. The Senate Committee report criticized EPA as having been "much too hesitant" to take actions to object too State permits, and called for a "vigorous overview of State

programs to assure uniformity and consistency of permit requirements and of the enforcement of violations of permit conditions." *Id.*

The theme of the Senate Report—that the objection was an expeditious mechanism to avoid delays in permit issuance and resolve disputes between the States and EPA—was echoed in the Conference Report on Pub. L. 95–217, which said:

> After the date of enactment of this provision the Administrator is expected to use the authority given by this amendment to issue a permit after objection to a State issued permit. Thus any litigation over the degree of effluent reduction required for a source should take place in the context of judicial review of the permit, rather than in the context of an enforcement action. *. *. *.
>
> Judicial review arising out of this provision would be in the same manner as judicial review of any EPA issued 402 permit. [*CWA Legis. Hist.*, Vol. 3 at 281.]

This passage clearly indicates that EPA permit issuance under section 402 is the only reviewable action associated with an EPA objection. The objection is an interlocutory decision, one which has no effect on the applicant and other interested persons except to shift the forum for hearings and review. Thus, Congress thought judicial review of the permit was the appropriate place to review EPA's determinations. Several other factors militate in favor of this view:

1. The availability of administrative review and the stay provision in EPA's permit issuance regulations means that EPA's objection determination has no effect on the discharger. In such cases, review is properly delayed until Agency action is final and effective. See *Toilet Goods Association* v. *Gardner*, 387 U.S. 158, 165 (1967).

2. Judicial review of an Agency objection prior to final permit issuance would unnecessarily bifurcate the judicial review proceedings and delay final Agency action. Review of the objection could consume months or even years. Permit issuance, appeals, and judicial review of the permit could consume additional months or years.

3. The short time period for Agency action precludes the sort of record building by EPA which is a normal prerequisite of effective judicial review. See *American Iron and Steel Institute* v. *EPA*, 543 F.2d 521 (3rd Cir. 1976).

*§ 123.31 Compliance evaluation programs.*

This section, which was proposed § 123.71, was retitled and slightly condensed. A few new requirements were included based on existing Agency policy. In particular, this section now requires that the State enforcement program have procedures and ability to receive citizen complaints about possible program violations and to ensure that these complaints are adequately considered. This requirement was included in the public participation regulations of former Part 105 and as proposed in Part 25. In order to include all the public participation requirements for State programs in Part 123, this requirement was moved from Part 25. EPA believes that this is an important aspect of involving the public in enforcement as mandated by section 101(e).

*§ 123.32 Enforcement.*

Proposed as § 123.72, this section drew many comments. However, most of the provisions of § 123.32 are identical to the requirements of the 1973 regulations (former § 124.73). EPA has not changed these provisions, although minor wording changes have been made for clarification. The new element of § 123.32 (proposed § 123.72(i)) is the addition of a penalty policy provision requiring States to calculate civil penalties for deadline violations using specified criteria. This requirement generated a great deal of confusion. Many commenters feared that States would be required to implement all aspects of EPA's penalty policy including use of the penalty panel and EPA's computer programs. While States are strongly encouraged to use these, § 123.32(i) only requires States to employ the basic precepts of the penalty policy. It allows States to exercise substantial discretion in settling civil enforcement cases. No change was made to the proposed version.

Another new provision, § 123.32(h)(2), has been added to clarify that State enforcement proceedings may not include additional elements of proof or mental state for establishing violations. EPA's approach has consistently been to require States to have the same enforcement remedies that are available to EPA. In exercising this enforcement authority, States should not have any additional elements of proof or other legal requirements which make State imposition of penalties more difficult than EPA action.

*Availability of Resources.—Proposed § 123.81.* Part of this proposed section has been deleted and part has been moved into § 123.4 (Program description). Proposed § 123.81(b) (identifying criteria for EPA evaluation of State resources) was deleted entirely because these criteria are matters relating to internal EPA review and do not need to be promulgated in the form of regulations. Nonetheless, EPA does require that sufficient resources be devoted to State programs. Proposed § 123.81(a) has been incorporated into § 123.4.

*§ 123.42 Agency board membership.*

Proposed § 123.83 on Agency board membership drew a very large number of comments, most of which argued that it was too stringent. Nonetheless, since § 123.42 is identical to former § 124.94 and is clearly mandated by section 304(i)(2)(D) of the Act, no changes have been made.

*§ 123.51 and § 123.52 Section 402 and 404 approval process.*

The approval process sections (proposed §§ 123.91 and 123.92) have been clarified and made more specific. The changes are consistent with the process EPA has routinely employed in these matters. Requirements from the proposed public participation regulations (e.g., the need for EPA to prepare a responsiveness summary) have been added.

*§ 123.61 Procedure for revision of State permit programs.*

The procedures for State program revision have been clarified and include a new requirement that EPA publish notice of any action substantially modifying a State program. Proposed § 123.103 was inserted into § 123.61.

*§ 123.62 NPDES program revisions under the CWA of 1977.*

A large number of comments were received on the dates specified in proposed § 123.102(c) for modifications to State programs implementing the 1977 amendments. These dates have been adjusted to be more realistic. Proposed § 123.102(a) was deleted because it contained only optional changes. States are still free to make these changes.

*IV. Part 124—Procedures for Decisionmaking Regarding National Pollutant Discharge Elimination System Permits*

A. *What Does This Part Do?* Part 124 establishes the procedures which EPA will use for receiving permit applications, writing draft permits, and soliciting public comment on them. It also establishes the procedures which EPA will follow in issuing final permits and holding evidentiary and panel hearings. A number of provisions of this Part are applicable to approved States through incorporation by reference in § 123.12.

B. *How Does This Part Relate To Existing Regulations?* In most cases, this Part will not change the general framework of the former regulations covering permit determinations. Applications for permits will still be filed with the appropriate permit issuing authority; draft permits will be prepared and made available for comment. After comments have been received and analyzed, any necessary changes will be made by the permit issuing authority, and a final permit will be issued. Any interested person will then be able to request an evidentiary hearing on any factual issues involved.

However, significant changes have been made in the procedures for variances, modifications, and other permit actions besides the basic issuance of a permit: In the degree to which permit decisions are documented before an evidentiary hearing begins; in the relationship of prior administrative proceedings to any evidentiary hearing; and in the hearing procedures for "initial licensing". Each of these points, all of which were the subject of comments, are explained in the following sections.

C. *How Does This Part Relate To The August 21, 1978 Proposed Regulations?* The following is a discussion of the significant comments received and the basis for revisions made to Part 124 of the proposed regulations, including the integration of the section 301(h) procedures into Part 124 (section 301(h) procedures were proposed separately on April 25, 1978, 43 FR 17484). Minor editorial changes have been made in all sections.

§ *124.1 Purpose and scope.*

A number of comments inquired whether denials of a permit would be subject to the same rights of public comment and potential evidentiary hearing as other permit actions. The answer is "yes" and a new section has been added to make this clear (§ 124.15). A denial of a permit could be based on, among other things, the discharger not complying with the requirements of Part 122, Subpart B.

§ *124.11 Applications.*

This section has been modified by moving proposed § 124.11 (b) and (c) into § 122.10. Proposed § 122.17, "Requests for additional information" has been made part of this section.

§ *124.12 Special provisions for applications from new sources.*

(1) This section allows the Regional Administrator to delay a hearing on a new source determination until the hearing on the final permit. Some commenters objected to such a delay, arguing that it could result in an Environmental Impact Statement (EIS) being written before the discharger had an opportunity to argue on appeal that the discharge was not a "new source."

The Agency believes the proposed approach is efficient. Hearings on a new source determination and permit terms will often involve common issues and witnesses. In such cases, the Regional Administrator should have the option of either bifurcating the hearing or waiting until after a final permit is written to hear all the issues. The choice will depend on which option would consume the least resources and time. Since EPA is legally responsible for preparing the EIS, EPA will share the burden of making a wrong decision.

(2) Some comments claimed the EPA lacked authority to restrict the construction of new sources pending National Environmental Policy Act (NEPA) environmental review, arguing that the Agency may regulate only discharges and has no power to regulate construction of sources.

While it is true that EPA lacks authority to regulate construction which will not result in a discharge of pollutants, EPA has an obligation under NEPA to consider alternatives to the proposed action where a permit issuance would necessarily involve a discharge. Judicial decisions under NEPA have made it clear the EPA must consider reasonable alternatives, and that the alternatives (where a new source is involved) must always include not permitting the source. Where a source's operation necessarily results in a discharge, denial of an NPDES permit is tantamount to denial of the right to construct the facility. Thus, in such cases, EPA cannot fully consider such environmental matters as land use, air quality degradation, solid waste disposal problems, and others, without consideration of alternatives which involve no construction at the selected site. Since construction of the facility could limit or eliminate some of the options which should be considered, EPA has the authority to require that NEPA review be completed prior to actual construction. For a complete discussion of this issue, see *EPA General Counsel Opinions*, "Water Pollution" at 310–311 (NILS 1979).

*Proposed* § *124.13 Information required for thermal discharge modifications.*

This section, which was essentially substantive requirements for thermal discharges, has been incorporated into Part 125, Subpart H.

§ *124.13 Modification, revocation and reissuance requests.*

Several persons urged that it would be inefficient in processing modification requests to require (as proposed in § 124.15) submission first of a request to apply for a modification and then of the application itself. EPA agrees and has revised this section to state that the modification can be based on the initial request itself unless more information is needed.

The proposed regulations also intended to put modification requests and variance applications on the same procedural "track" as other permit applications. They did this by requiring those seeking a modification to write to EPA and request permission to apply for a new permit. If the request was granted, an application could then be filed and would be processed like any other application. This basic approach has been retained in the final regulations.

Suggestions for an automatic right to a hearing when permit modification requests are denied, have been rejected. Departures from the five year cycle of permit issuance and reexamination laid down by section 402(b)(1)(B) of the Act should not be encouraged. If encouraged, they could keep numerous permits in a state of perpetual reexamination to the detriment of the water pollution control program. By the same token, the regulation has been amended to make clear that even modification requests which are granted only reopen the permit to a limited extent.

§ *124.14 Permits required on a case-by-case basis.*

This section (proposed § 124.16) provides that sources which in the normal course are subject to a general permit program under § 122.48, may be required to apply for an individual permit in certain cases. Comments urging that an evidentiary hearing be afforded before requiring individual permit application have not been accepted. To allow this would produce long delays and a potential for two consecutive evidentiary hearings on closely related issues. Instead, the question whether an individual permit should be required at all will be open to full reconsideration as part of the deliberations on the potential terms of any such permit.

*§ 124.21–24 State certification.*

(a) State certification under section 401 of the Act was also the subject of numerous comments.[1]

(1) Many commenters objected to the delays caused by the State certification process in the NPDES program. Specifically they thought that the provision in the proposal for potentially allowing a State one year to certify was unconscionable. In response to those comments the regulations have been modified so that the right to certify will be deemed waived unless exercised within a *specified* reasonable time which shall not exceed 60 days unless the Regional Administrator finds that unusual circumstances require a longer time.

Because of some ambiguity in the certification provisions concerning the role of State certification in the EPA permit issuance process, the certification provisions were amended so as to set out a realistic, workable procedure consistent with the statute. A State will now be required to identify those provisions which it finds necessary to comply with applicable State or Federal law. However, since certification as to Federal requirements would duplicate EPA's work, EPA expects that ordinarily States will limit their certifications to requirements of State law.

Some problems have resulted from the practice of certifying draft permits, which practice has arisen from the practical difficulties of certifying applications. In particular, certifications have not always clearly stated exactly what conditions are necessary to comply with State law, and whether less stringent conditions would also satisfy State law. The final regulations remedy these problems by requiring States to set forth in all cases the minimum terms and conditions which will be necessary to comply with applicable law. For example, if a State certifies a permit with an effluent limitation imposing a daily maximum BOD of 25 mg/1, it will be required to identify also a ceiling representing the minimum level of control, such as 30 mg/1 or 40 mg/1, which the State finds necessary to comply with State law. In responding to public comments, or in an evidentiary hearing, EPA will be barred from considering any effluent limitation less stringent than the "ceiling" set by the State in its certification.

If the State fails to provide the "ceiling" required by these rules, EPA will be free to consider any changes which it finds appropriate during the subsequent permit review process. Of course, the Agency has an independent obligation to include in permits effluent limitations which are necessary to comply with State law, including water quality standards, whether or not the State has certified. See Decision of the General Counsel No. 58.

While EPA recognizes the burden that this procedure imposes upon States, the only logical alternative is unacceptable as a practical matter; that is continual resubmission to the State for recertification each time a draft permit is made less stringent as a result of public review during the permit issuance process.

(2) Changes have been made to allow EPA to modify a permit under certain circumstances if a State changes its certification during the EPA permit review process. The modified certification must be based upon changes in State law or upon a State court decision. Moreover, if a permit is final before the modified certification is received, it will be modified only to delete provisions resulting from a certification found invalid by a State court. These limitations are necessary to avoid a "moving target" of State law during the permit's life. See § 124.86(c) and preamble discussion of that paragraph for a fuller treatment of this issue.

(3) A new section § 124.24 has been added to the State certification Subpart. This addition contains the provisions for concurrence/certification from the April 25, 1978 proposal for section 301(h) modifications. The major divergence from normal permit procedures is that NPDES States (or the certifying Agency within a non-NPDES State) must concur/certify as described in this new section. Proposed § 124.61(a)(2) stated that no final permit shall be issued by EPA which grants a section 301(h) modification until the appropriate State has been given 30 days to approve or disapprove the modification. If the State disapproved the modification within 30 days, the modification would be deleted from the permit. Proposed § 233.45 had a similar provision except that there was no time limitation. One comment to proposed § 233.45 suggested that EPA should allow 30 days for State concurrence or concurrence would be considered denied. Although EPA recognizes the need to reduce delays in section 301(h) processing, we do not believe we can deem concurrence denied (as opposed to waived) if not granted within a certain number of days. Therefore we have instead chosen to deem concurrence/certification waived after 60 days rather than adopt the suggestion that concurrence be deemed denied.

*§ 124.31 Draft permit.*

A number of comments objected to the statement in proposed § 124.41(a) (now § 124.31(a)) that "any other relevant information" in addition to the types specified could be considered in deciding on a draft permit. Although the Agency has retained the language, it is not intended to allow draft permits to be based on material that is not reflected in the administrative record.

*§ 124.32 Other draft permits.*

This section provides that when EPA moves to revoke or suspend a permit, it shall do so by formulating a new draft permit subject to notice and comment and potential evidentiary hearing. Although commenters did not object to the purpose behind this section (to make sure that such decisions are made through the same basic procedures that apply to the permit issuance) some commenters suggested that the permit holder should be notified before any such draft permit was issued. EPA has not accepted this suggestion because the draft permit will constitute sufficient notice well before any legally effective action is taken. This section has also been revised to require *all* draft general permits other than separate storm sewers, (whether issued by EPA Regional Offices or the States) be sent to the EPA Deputy Assistant Administrator for Water Enforcement for 90 days for his/her concurrence or denial.

*§§ 124.33–35 Statement of basis, fact sheet, and administrative record.*

A major purpose of the proposed regulations was to increase the level of explanation of how and why EPA arrived at specific permit conditions, and to specifically identify the documents or other information considered in doing this.

The proposal would have done this by: (1) requiring each permit to be accompanied by a fact sheet explaining the factors considered and the reasons for the decision, and (2) requiring permits to be based on an "administrative record."

The administrative record could simply be an adequately organized file

[1] EPA recognizes that the former regulations in 40 CFR Part 123 are in need of revision. The substance of these regulations predates the 1972 amendments to the Clean Water Act and has never been updated. However, because of the impact of State certification of non-NPDES permits on a myriad of Federal programs, it will be necessary to consult with the affected agencies in some detail before changes are made. Meanwhile, the current certification requirements for Federally issued non-NPDES permits or licenses have been moved from Part 123 to Part 121.

drawer containing the relevant information. This ensures that the information considered in formulating a permit is identified and publicly available for comment. The administrative record requirement does not mean that there must be individual copies of the monitoring or reporting conditions or effluent limitations guidelines and development documents in the file, as long as they are properly cited. EPA's response to the many comments that were received on these provisions is provided below.

(1) A number of commenters argued that to prepare a detailed "fact sheet" and administrative record for every permit would result in a lot of paperwork for which there was no real demand. EPA agrees with these comments since, in our experience, although all permits are made available for public comment, over 90% of the EPA-issued permits become final without any public comment or requests for an evidentiary hearing. Accordingly, § 124.34 (proposed § 124.44) has been rewitten to require a "fact sheet" only for permits to major dischargers and other controversial permits including all variances or modifications. Permits for small discharges will not require a fact sheet and will only require a less detailed "statement of basis".

In many cases the "statement of basis" could consist of the internal memorandum prepared within the Agency which informs the person signing the permit of the guideline or other source of the effluent limits and any issues which the permit raises. By utilizing such an approach, EPA believes we are maximizing the utilization of the permit issuing authority's limited resources without denying the public or permittee basic information upon which to judge the adequacy of the permit.

The regulations have also been revised to provide explicitly that a fact sheet can be prepared for any permit which is the subject of widespread public interest during the public comment period and for which no fact sheet was prepared originally.

(2) Since the fact sheet can be quite extensive, States objected to mailing a copy to each person on a mailing list since most permits have proved to be of little interest. Therefore, the public notice of every draft permit will be sent to those on the mailing list but the fact sheet (or statement of basis) will be sent only on request.

(3) Because the fact sheet requirement has been limited to major or controversial discharges, the requirement of a special level of discussion for discharges of over 500,000 gallons per day has been eliminated. Distinctions among major or controversial permits based on the amount of water discharged do not correspond to any real differences in the degree of discussion that is advisable.

(4) Comments from both industry and EPA Regions on proposed § 124.44(a)(6)(iii) suggested deletion of the requirement that the record contain all documents cited in an EIS or similar analysis. These comments argued that since so many documents are generally cited, the requirement would be impossible practically and would also make the record less, rather than more useful. EPA agrees with these comments and has revised this section accordingly. Persons who wish specific documents to become part of the record may supply those documents as part of their comments under § 124.42.

This section has also been reworded to clarify that generally available material cited in a fact sheet does not need to be physically included in the administrative record.

*§ 124.36 Applicability of Subpart D to draft permits incorporating section 301(h) modifications.*

A new section, § 124.36, has been added to indicate that Subpart D is applicable to section 301(h) proceedings except, as provided in proposed Subpart C of Part 233, the Administrator, or a person designated by the Administrator will prepare the draft permit, not the Regional Administrator as with other draft permits.

*§§ 124.41 and 124.42 Public comments and public notice.*

The public notice sections were amended to cut time and paperwork requirements based on overwhelming objections to the proposed changes. On the advice of the States, the public comment period reverts from the proposed 45 days to the former regulations' 30 days. Many States felt that 30 days is sufficient for the vast majority of noncontroversial permits and additional time can be made available for those permits that generate public interest. EPA suggests, however, that a liberal policy be followed in granting extensions of the comment period.

Some commenters suggested that other methods of public notice of an action should be authorized. EPA and the States have found that the mailing list has been by far the most effective means of eliciting public participation into the NPDES process. Therefore, we urge States to develop mailing lists as provided or by any additional means they have found effective.

Similarly, States and EPA Regional Offices both stated that newspaper notices were ineffective in eliciting public comment and were a substantial drain on limited resources. EPA agrees and has revised this section to make newspaper notices shorter as well as optional if other means, such as posting, are utilized.

The proposed regulations allowed certain Federal and State agencies a separate early chance to comment on permit applications before the public comment period began. This provision has been eliminated in response to comments both from EPA Regions and from representatives of dischargers. These agencies now will be expected to comment during the public comment period. In particular cases, however, they may still be consulted informally before the draft permit is formulated.

This revision also deals with those comments which argued that the comments of other agencies on a draft permit must be reflected in the record. As noted elsewhere in this preamble, any permit terms in EPA-issued permits must be supported by the administrative record whether or not they are based on the views of other agencies.

*§ 124.43 Obligation to raise points and provide information during the public comment period.*

This section is discussed below along with § 124.76.

*§ 124.44 Terms requested by the Corps of Engineers and other Government agencies.*

Proposed §§ 124.21 and 124.22 stated the circumstances in which terms may be included in an NPDES permit at the request of another Federal agency. Although many comments were received on this, no substantive change has been made because EPA continues to believe the language in the proposal was correct. The Act says that EPA "shall" include in permits those conditions requested by certifying States and the Corps of Engineers.[2] Any challenge to those conditions must therefore be made through the State or Corps of Engineers procedures for challenging decisions. Terms based on the comments of other agencies without such veto authority must be within the discretion of EPA

[2] The statement of one commenter that the Corps authority under section 402(b)(6) of the Act is limited to vetoing permits, not imposing conditions on them, seems simplistic to EPA. A Corps of Engineers' statement that certain terms must be included in a permit can properly be viewed as a statement that the permit will be vetoed unless it contains those terms.

under the Clean Water Act and are therefore subject to the same procedures that apply to permits generally.

In response to comments, affected States are now included in § 124.44(c). This revision clarifies the right of such States under sections 402(b)(5) and 401(a)(2) of the Act to require more stringent requirements so that a discharge of another State does not violate its water quality standards.

*§ 124.45 Reopening of comment period.*

Proposed § 124.44 (now § 124.45) allowed for reopening of a comment period (or reproposal of a permit) at the discretion of the Regional Administrator.

Several comments suggested an automatic "reply comment" period in which the discharger and others could respond to points made during the main comment period. EPA agrees that this may be a good idea in some specific cases, but it could be unnecessarily burdensome if required by regulation in all cases. Therefore, the proposal has not been changed.

*Subpart F—Special Provisions for Variances and Statutory Modifications*

In response to several suggestions, the procedures for variances have all been placed in a single Subpart. This revision is done to present the public with an organized view of how variances will be handled within the normal permit procedures.

Under the Clean Water Act and the former regulations, there are more than a dozen different statutory or regulatory provisions on which permit requirements could be based, and seven provisions under which a variance from those provisions could be granted. Many of these provisions are not covered in the existing regulations, and where they are, the references are scattered through various parts of the Code of Federal Regulations.

Subpart F deals with the problems in two ways. First, it consolidates into one **Federal Register** Subpart the former procedures for making decisions on permit terms contained in 40 CFR Parts 122 and 402 (relating to thermal discharge requirements) and the former Part 124.

Second, it specifies where in the sequence, "application—draft permit—comment—final permit", permit actions other than the simple one of deciding on permit applications should fit.

In particular, it provides that whenever possible, a variance must be applied for before the close of comment on a draft permit. This will ensure that there is an opportunity to consider all the relevant issues before deciding the terms of a final permit and that issues are not raised at a later date for purposes of delay. The regulations also provide that where a variance is properly requested after this stage but before a permit has become final under § 124.101, the decision on the variance will still be made through the same permit procedures that apply to other permits. This will be done in appropriate cases by issuing a new supplementary draft permit embodying the Agency's response to the variance request, and holding action on the original permit until the supplementary permit has reached the same procedural stage and the two permits can proceed together.

*§ 124.51 Time deadlines for applications for variance from and modifications of effluent limitations.*

(1) A number of comments argued that the time limits for variance applications set forth in proposed § 124.14 were too strict. These comments have been accepted in a number of particulars.

(a) The statute requires applications for variances under section 301(c) and under section 301(g) to be submitted 270 days after promulgation of the relevant effluent guidelines or by September 25, 1978, whichever is later. However, since EPA has not yet issued crieteria for such applications, it clearly would have been unreasonable to have required a complete application by last September. Accordingly, these regulations incorporate the requirements of previous interim final regulations stating that applicants need only have submitted a very brief notice by September 25, 1978, (or within 270 days of the promulgation of an applicable effluent guideline) to qualify under that deadline. See 43 FR 40859 (Sept. 13, 1978).

Similarly, in the case of section 301(h), § 124.51(c)(1) revises proposed 40 CFR § 233.32 to indicate that a preliminary application must have been submitted to EPA by the statutory deadline, but the final application should not be filed until the section 301(h) criteria are promulgated in final form in Part 125, Subpart G. The criteria, when promulgated, will also specify the method of, and timing for, making a final application. This revision to the timing requirement is necessary because the statutory deadline has passed and EPA has not yet issued section 301(h) criteria.

(b) Dischargers who wish to be considered for a section 301(c) or section 301(g) variance will be required to comply with the substantive requirements of § 124.43 and Part 125 (once they are promulgated) by the close of the public comment period of their draft permits.

In some cases, draft permits will contain effluent limits that are not based on effluent guidelines but may still be eligible for variances. In those cases, it would be impossible to submit supporting evidence that a variance should be granted during the 30-day period of public comment. Therefore, in those cases, and in other cases the Agency believes appropriate, the Regional Administrator may grant an extension for up to six months to allow the applicant to complete his or her submission.

However, there will be many times when waiting until the last minute of the comment period would not be in the interest of the permitting process, the applicant, or the public. Therefore, in those cases where it is clear that a discharger will be submitting an application for a variance, the Director may require the applicant to submit that application in full before the draft permit is formulated. This requirement is intended to reduce the time for permit issuance, especially in those cases where it is clear that a variance or modification will be applied for, such as where the discharger has submitted the 270 day application for a section 301(c) or 301(g) variance (§ 124.51(b)(2)(i)) or where a fundamentally different factors variance is still pending on the first permit. This will lower the permit processing costs for the permitting agencies, the applicant and the public because there will no longer be a draft permit subject to a public notice that is irrelevant to the issues in the final permit.

*§ 124.52 Decisions on variances and modifications which EPA or the State can grant.*

Section 124.52 explains how decisions will be made on variances. There is a distinction between the variances and modifications EPA and the States may grant and those the Act requires that only EPA may grant.

(1) Many commenters objected to EPA and not approved NPDES States making variance determinations for fundamentally different factors variances, economic variances, environmental variances, and section 301(h) secondary treatment waivers. These commenters thought the States with NPDES authority have the authority to rule on these particular variances.

The 1972 Amendments to the Federal Water Pollution Control Act carefully spell out the relationship between the Federal Government and the States in

achieving the Act's goals of eliminating the discharge of pollutants from the Nation's waters. A major responsibility of the Federal Government under the Act is the development and promulgation of uniform national technology-based standards for categories and classes of industrial discharges. Variances from these standards are allowed if the applicant can show the plant is fundamentally different from those plants used in developing the limits. Since EPA promulgates those national standards, EPA, not the States, is the authority best able to judge if a plant is fundamentally different from those that were the basis for the standard.

The variance sections in the Act clearly designate who the Congress intended to make the determinations. For example, section 316(a) provided for thermal waivers to be granted by either EPA or NPDES States. Specific grants of authority appear in the 1977 amendments which added sections 301(g), 301(h) and 301(i). Section 301(g) authorizes "the Administrator, with the concurrence of the State" to grant variances from BAT effluent limitations. Similarly, section 301(h) provides that permits incorporating modifications of the secondary treatment required may be issued by "the Administrator with the concurrence of the State. . . ." Section 301(i)(1), municipal time extensions like section 316(a) variances, may be granted by the "Administrator (or, if appropriate, the State)." Finally, section 301(c), only mentions the Administrator and so variances under it can only be granted by the Agency.

(2) A number of commenters objected to the condition in the proposal that when the Act required State concurrence in a variance that is issued by EPA, the variance request would not be considered by the Agency until the State had first approved it. In response, proposed § 124.14(e) has been modified in § 124.52(b) to allow the State Director to concur after EPA makes a draft determination. In States where EPA is the permit issuing authority a State will certify the draft permit in the regular procedure. All State (whether NPDES or not) must concur/certify section 301(h) determinations before EPA can issue the section 301(h) modified permit (see § 124.24).

Some commenters objected to considering States' views at all where the act did not explicitly require it. However, States have authority, where State law requires it, to set more stringent limitations for a permittee under sections 401 and 510. Though EPA grants the variances, the variance sections do not allow EPA to overrule State authority to require more stringent State requirements. Therefore, it is not appropriate to disregard State input into variance determinations.

*§ 124.55 Special provisions for modifying the secondary treatment requirement under section 301(h).*

Paragraph 124.55(a) sets out the requirements for submission of additional information necessary to make a section 301(h) determination. This section is substantially the same as proposed § 233.32(c) except that it states that if an application, "on its face," demonstrates that the applicant is not entitled to a section 301(h) modification, then the applicant cannot submit additional information and the application will be denied. This requirement is consistent with Congressional intent, [*CWA Legis. Hist.* at 448] and has been added to clarify EPA's original intent behind proposed 40 CFR § 233.32(c). This is similar to the "summary denial mechanism" suggested by some commenters.

States argue they should be allowed to issue permits with section 301(h) modifications. EPA disagrees and believes that the proper procedure is dictated by the Act itself. Section 301(h) provides, not that EPA may modify an existing NPDES permit to allow a less than secondary discharge if the permittee meets the requirements of section 301(h), but that EPA may "*issue a permit* under section 402 which modifies the requirements of section 301(b)(1)(B)" (emphasis added). This requires EPA to assume full NPDES permitting authority—even where the State has an approved NPDES permit program—in issuing any section 301(h) permit. This interpretation is buttressed by the fact that the statute calls only for "State concurrence" in any section 301(h) permit issued, and does not require the State to crank the permit back into the State permitting process and add additional terms and conditions necessary to assure compliance with sections of the act other than section 301(h).

EPA believes this result is not only required by the act but makes a great deal of sense as a practical matter. Any other approach would bifurcate the permitting process for section 301(h) dischargers between EPA and the State, resulting in a great deal of confusion (especially since there is some overlap between section 301(h) requirements and other applicable requirements of the act) and delaying issuance of final permits. To clarify this issue, EPA has revised proposed § 124.61(a)(2) (now § 124.55(d)) to indicate that NPDES States may (not must) revoke the existing NPDES permit when they concur in the modification and they may also choose to cosign the section 301(h) permit. EPA hopes that NPDES States will choose to revoke any existing State-issued permits and cosign the EPA-issued section 301(h) permit because this will reduce confusion as to permit limitations.

*§ 124.61 Stays.*

(a) Proposed § 124.61(a) provided for automatic stays of contested permit provisions if an evidentiary hearing request is granted, or if a petition for review of denial of a request for an evidentiary hearing is filed with the Administrator.

Numerous comments were received on this provision. One recurrent theme was that if a permit was stayed by EPA, compliance schedules in it should be extended for the same period that the stay was in effect. This suggestion has been accepted except where the technology is not contested but the ability of such technology to reach certain effluent limits is. In addition, compliance schedules cannot be stayed where failure to meet a statutory deadline or a permit term of more than five years would result from such an extension. It has been EPA's consistent position that it lacks power to grant dischargers more time to comply with the statutory mandate than Congress has decided they should have, or to extend the statutorily prescribed permit term. However, permits may be continued by operation of law under the Administrative Procedure Act. See § 122.12(b).

(b) A number of comments objected to the statement in proposed § 124.61(c)(2)(ii) (now § 124.61(d)) that a new source or a new discharger is considered to be without a permit pending the completion of any evidentiary hearing. However, this provision is only a logical extension of the provision (which most of these same commenters endorsed), that new permit terms are stayed pending those hearings and therefore has been retained.

For this reason EPA has deleted the provision allowing the Regional Administrator to approve the start of discharge by a new source or a new discharger even though a hearing on that source's permit is still in progress. Such sources which are concerned about their ability to open on schedule under these provisions should apply for the necessary permit far enough in advance of their target opening dates to allow

time for completing all necessary procedures.

EPA has recently established several procedures to expedite the issuance of NPDES and other EPA permits (e.g., Prevention of Significant Deterioration permits for air new sources) to new facilities. EPA has designated in each EPA Regional Office a New Source Coordinator charged with the responsibility of shepherding these applicants through the permit process. EPA has also adopted a policy of (1) informing each new facility within 30 days of request whether a particular permit program will apply to the new facility and (2) determining within 30 days of receipt whether an application is complete. Furthermore, EPA Regions are establishing permit tracking systems or procedures to ensure that new facility applications are addressed expeditiously. All of these initiatives will help minimize delay.

One comment also asked about the relation of § 124.61(c)(2)(ii) to proposed § 124.11(c) (now § 122.10(c)) which required new dischargers to apply 180 days before the scheduled start of operations. The 180 days is a minimum period; it does not preclude applications before then.

(c) A number of commenters asked that a provision be made for appealing stays, or asked about the status and applicability of determinations that permit terms were uncontested and severable from contested ones.

In these regulations we have accommodated these concerns by requiring the Regional Administrator to identify in the notice of a grant of the hearing the terms of the permit which are not contested and therefore are enforceable against the discharger during the permit proceedings. In some cases it may be necessary for the Regional Administrator to write new conditions to represent uncontested requirements. For example, if a final permit would require compliance with effluent limitations representing the application of both technologies A and B, and the discharger agrees that compliance with technology A is appropriate but challenges application of technology B, the Regional Administrator must write specific permit conditions requiring the installation of technology A. The fact sheet or statement of basis should include the type of technology contemplated by the permit writer to meet any technology-based limits in the permit.

Appeals from determinations on uncontested conditions will be available only through the provisions of § 124.101.

(d) A number of comments questioned the provisions in the proposed regulations that made certain deadlines run from the date of receipt of a specified notice. Such a provision could result in different deadlines for different people, and make it more difficult to find out when deadlines actually did elapse. Accordingly, these provisions have been changed to specify the time when the notice is given as the starting point for deadline, and three additional days provided to cover mailing delays (§ 124.134).

*§ 124.64 Response to comments.*

A major part of the effort in the proposed regulations to increase the extent to which EPA explains the basis for permits was requiring a response to comments received on a draft permit. The substance of those proposed provisions has been left essentially unchanged. However, proposed § 124.63 ("final fact sheet") has been retitled "Response to comments" to clarify that a document must be prepared for every issued permit which responds to all significant comments and objections to the draft permit and indicates which provisions have been changed and the reasons for the change. A comment has also been added to make clear that if new points are raised during the public comment period, EPA has the right to add new material to the administrative record to document its response to those new points.

*§ 124.65 Administrative record.*

The "administrative record" provisions have not been changed, except to delete the proposed requirement that all records be indexed and subcategorized. Though this may be advisable as a matter of policy for large records in significant cases, it seems inadvisable to require it across the board by regulation.

At the request of NPDES States, the administrative record, as detailed in this section, is not a requirement for State programs.

*Subpart H—Evidentiary Hearings for EPA-Issued Permits*

*§ 124.71 Applicability.*

The provision in this section for not holding evidentiary hearings on general permits was approved by the one commenter to address it directly. The Natural Resource Defense Council in its comments did not criticize this approach but asked what alternative mechanisms for tightening requirements on individual sources subject to general permits were available. In response, EPA wishes to point out that interested persons are always free to suggest in their comments on draft general permits, or in a petition to EPA, that issuance of an individual permit should be required. EPA will then be obliged to answer the points made and to issue an individual permit if it appears that step is required.

*§ 124.72 Definitions.*

Comments from the Natural Resource Defense Council pointed out that the proposal, by automatically making the permittee a party to any evidentiary hearing, could result in the permittee not having to make the commitments to make witnesses available and to file certain papers to focus the issues that are required of those who become parties through their own affirmative actions.

EPA agrees with this comment and has therefore deleted this provision. Permittees will still get notice of all hearing requests, and will be free to intervene in hearings to protect their interests.

*§ 124.74 Request's for evidentiary hearings.*

(a) The test for "standing" to request an evidentiary hearing has been relaxed in the final version of the regulations. Instead of the stricter test contained in the proposal, the standard in the existing regulations will be retained.

(b) Some comments questioned the provision in § 124.74(b)(4) that persons requesting a hearing agree in advance to make potential witnesses under their control available to testify. EPA lacks explicit subpoena authority for hearings held in connection with NPDES proceedings and this language is necessary to provide some equivalent assurance that needed witnesses will be available. In line with this purpose, and as suggested by other comments, § 124.74(b)(4) (now § 124.74(e)(4)) has been revised to clarify that the duty to produce witnesses only applies when the Presiding Officer has ordered their production.

*§ 124.75 Decision on a request for a hearing.*

Section 124.75 and § 124.101 have been revised to clarify that a Regional Administrator's denial of a hearing may be appealed to the Administrator, and the Administrator may review or reverse any legal or policy conclusions on which that denial was based.

*§ 124.76 Obligation to submit evidence and raise issues before a final permit is issued.*

Two major purposes of the proposed changes to EPA procedures were to

encourage resolution of issues at the time of comments on a draft permit, rather than in the far more burdensome context of an evidentiary hearing, and to link that hearing explicitly to the preceding stages of permit issuance. At present, even where all major issues have been fully analyzed and resolved before the final permit was issued, they can be re-examined anew in the evidentiary hearing. The Presiding Officer may not know what happened regarding the permit before the hearing began. Also, new issues might be raised at the evidentiary hearing even though they could have been settled much more simply if raised at an earlier stage.

The proposed regulations attempted to remedy this situation in two ways. First, the administrative record on which the final permit was based would automatically go into evidence at any evidentiary hearing so that the decisionmaker would have the benefit of the earlier stages of consideration of the issues.

Second, no issue could be raised at an evidentiary hearing if it was not first raised during the comment period on the draft permit (proposed § 124.53). An exemption from this requirement was provided if "good cause" could be shown for the failure to raise the issue earlier. These provisions have largely been retained in the final regulations (§ 124.43). The purpose is not to exclude any person from EPA's decision-making process, but rather to focus the attention of the Agency and parties on the informal comment and public hearing stage of the permit issuance process. EPA believes that policy issues and most technical issues relating to the issuance of NPDES permits should be decided in the most open, accessible forum possible, and at a stage where the Agency has the greatest flexibility to make appropriate modifications to the permit. Evidentiary hearings, because they entail great delays, because they are cumbersome, and because only the well-financed can afford to participate, are disfavored as a means of solving any issues other than contested factual issues requiring cross-examination. Not only will this in the long-run lead to greater and better informed citizen participation, it will increase efficiency in the permit issuance process and will speed application of pollution control requirements.

Many comments were received on these different aspects of the proposal. The proposed changes were very widely endorsed and supported in principle. However, non-governmental commenters argued that the regulations went too far in tying the evidentiary hearing to the preceding notice-and-comment stages. These comments have been largely accepted. Specifically, § 124.53 (now § 124.43) and § 124.76 have been amended very much along the lines suggested in the comments of the Utility Water Act Group.

In addition, though the proposed requirement for automatic receipt of the administrative record in evidence has been retained, a comment has been added and the section has been changed slightly to make clear that testimonial material in the administrative record should be subjected to the same tests of its testimonial value as other testimonial material introduced at the evidentiary hearing.

Some comments argued that receiving the administrative record in evidence automatically conflicted with the provision in 5 U.S.C. § 556 for the exclusion of "irrelevant, immaterial, or unduly repetitious evidence". As the comment described above explains, receiving the administrative record in evidence serves to document for the Presiding Officer and the parties the prior proceedings out of which the evidentiary hearing will arise and on which it must in part be based. A substantial useful purpose is therefore served by this procedure. This purpose could not be served as well, and many opportunities for useless arguments would be opened up, if the section were amended to provide that the administrative record could be edited in some fashion before or after its introduction.

§ *124.84 Summary determinations.*

A number of comments objected to the provision in § 124.84 that allowed motions for summary determination to be made "with or without" supporting affidavits. They feared that by explicitly mentioning the possibility of a motion without supporting affidavits, the regulations might result in shifting the burden of proof to the party against whom the motion is made. No such result is intended by this provision. Motions for summary determination must be affirmatively supported. The form of the proposal was only meant to recognize the possibility that material already in the record might amount to that affirmative support.

§ *124.85 Hearing procedure.*

(1) *Burden of proof.* Comments came in on all sides of the question "Who should bear the burden of proof?" The comments discussed, not so much the burden of going forward, which most commenters agreed could properly be shifted by regulation, as the ultimate burden of persuasion. Several changes have been made in response to comments, but the basic approach has not been changed. Because this is a complex issue, it is discussed in some detail.

Most comments agreed that the Act explicitly assigns a burden of persuasion for most variance decisions. The Act explicitly provides that variances under sections 301(c), 301(h), 301(g), and 316(a) may only be granted if the applicant carries an affirmative burden of proof. Variances under section 301(c) are conditioned on a "showing by the owner or operator of such point source satisfactory to the Administrator"; sections 301(g) and 316(a) uses almost the same language; section 301(h) variances may be granted "if the applicant demonstrates to the satisfaction of the Administrator [that the conditions are met"].

The question then becomes what the substantive burden should be for basic permit terms not involving a variance. That question, in EPA's opinion, is of more limited importance than might first appear.

When EPA proposes permit terms, it has a burden of going forward, or, stated differently, an obligation to provide information and material so that other interested persons can understand what the proposed terms are based on and the reasoning behind them. Other persons have a similar burden with respect to terms they propose. This obligation has been recognized by EPA (See Decision of the General Counsel No. 63, pp. 28–31), and is part of the law of informal rulemaking as well. *Portland Cement Ass'n.* v. *Ruckelshaus,* 486 F.2d 375 (D.C. Cir. 1973). The provisions of these regulations on statement of basis and fact sheet, administrative record, and comments are largely aimed at implementing those requirements.

The question of the substantive burden of proof assumes importance when the information provided by the various interested persons under these obligations is fairly evenly balanced in the conclusions it points to. A substantive burden of proof rule can be used to help decide which conclusions should be accepted. It is in this context that the question of whether EPA or the person challenging a permit term bears the burden of proof assumes importance. In one sense, every party could be said to have the "burden of persuasion" as to the permit terms that it was advocating, but that approach would be of little use as a guide to decision. Accordingly, the regulations (as proposed and promulgated) assign the substantive burden of proof to the permit applicant

in all cases. The Administrative Procedure Act (APA), 5 U.S.C. section 556(d) provides that "except as otherwise provided by statute, the proponent of a rule or order has the burden of proof." Since dischargers are under a statutory obligation to apply for and receive an NPDES permit, the United States Court of Appeals for the Seventh Circuit has recently held the discharger is the proponent "as the applicant for a permit, without which it would be forbidden by law to discharge pollutants," *U.S. Steel* v. *EPA*, 536 F.2d 822, 834 (7th Cir. 1977).

Such a conclusion follows from a literal reading of the statute. It also makes sense from the standpoint of the public policy. Though we acknowledge that EPA may have some disposition to favor its own conclusions on the terms of a given permit, in general it can be expected to be more concerned with carrying out the terms of the statute in the context of given permits than a discharger. Accordingly, it is proper to fix the substantive burden of proof on the party which can be expected to have relatively less interest in achievement of the statutory purpose.

Comments were received suggesting that the Agency's position regarding burden of proof is inconsistent with Decision of the General Counsel Nos. 63 and 72. The difficulty is caused by the use of inconsistent terminology in these opinions. In Decision of the General Counsel No. 63, the term "ultimate burden of persuasion" was used with respect to the EPA's obligation under section 316(b) to present evidence regarding best available technology for minimizing the environmental impact of intake structures. In context it is apparent that EPA has the burden of coming forward with evidence regarding intake structures. This cannot shift the ultimate risk of non-persuasion, which lies always with the discharger. To the exent that Decision of the General Counsel No. 63 can be construed to shift this risk of non-persuasion to EPA, it is incorrect. Decision of the General Counsel No. 72 correctly distinguishes between the burden of coming forward with evidence and the risk of non-persuasion, and labels the burden of coming forward the "burden of proof."

(2) *Cross-examination.* (a) Several commenters objected to the restrictions on cross-examination of EPA employees set forth in proposed § 124.83(b)(16). They argued that cross-examination should be allowed on facts which formed the basis of legal or policy matters, or on those matters themselves.

Facts which meet the other tests for cross-examination and which are relevant to legal or policy judgments are of course potentially eligible for cross-examination. However, the proposed language has been retained to underline that cross-examination on legal or policy matters per se should not be allowed. These matters of course deserve to be clarified as much as any factual issues, but cross-examination is not the right way to do it. Written presentations and oral argument can perform the same task far more efficiently and should be relied on instead.

One comment also objected to the provision that required all evidence in an NPDES proceeding to be submitted in written form unless an affirmative showing could be made that oral presentation was necessary. It argued that the Food and Drug Administration (FDA) regulations cited in support of this position did not really support it. However, the FDA regulations at issue are similar to § 124.85(c) and EPA interprets the content of the two provisions as being the same (see 21 CFR § 2.154(b)). FDA regulations require written evidence on "general" matters and leaves the form of presentation to the choice of the parties where "particular" matters are concerned. However, "general" matters are said to involve (among other things) "scientific, medical or technical information not relating to a unique event", 41 FR 51706, 51716 (Nov. 23, 1976), and this is a description that could apply to many issues in an NPDES proceeding.

(c) Proposed § 124.83(c)(5)(iii) is a limited provision for "discovery" in NPDES evidentiary hearings. Comments were received arguing both for the expansion and for the deletion of this section. In the final version, this section has been kept and also applies in panel hearings (Subpart I). Although information may be attainable under the Freedom of Information Act or section 308 of the Act, discovery may be a more useful and direct approach to elicit information for a hearing.

(d) Several comments challenged as illegal the provision in § 124.83(c)(6) authorizing the Presiding Officer to group parties with similar interests. We have not changed this section since we agree with Judge Friendly and the Food and Drug Administration that such a provision is fully authorized by existing law, see *National Nutritional Foods Assoc.* v. *Food and Drug Administration*, 504 F.2d 761, 795 (2d Cir. 1974). See also 41 FR 51706, 51718.

*§ 124.86(c) Motions.*

The general rule is set out in § 122.15 that the applicable regulations and requirements for NPDES permit issuance are those in effect at the time a permit is issued by a State or by EPA under § 124.61.

This provision is consistent with the decision of the Administrator *In the Matter of U.S. Pipe and Foundry Co.*, NPDES Appeal No. 75–4 reprinted in EPA, *Decisions of the Administrator and Decisions of the General Counsel* v.I at 110 (1975). The Administrator's views on this issue were adopted by the Fifth Circuit in *Alabama ex rel. Baxley* v. *EPA*, 557 F.2d 1101 (5th Cir. 1977).

Proposed § 124.86(c) authorized Presiding Officers to apply in permit hearings regulations issued after the permit is issued under § 124.61. For an explanation of the proposed regulation, see 43 FR 37080 (Aug. 21, 1978).

Several commenters contended that § 124.86(c) violates due process and is inconsistent with the *Alabama* v. *EPA* decision. EPA does not believe that any due process issue can be involved here. All parties will have a full opportunity to challenge in the adjudicatory hearing the application of any regulations which are applied to a discharger under § 124.86(c). Moreover, the provision may not be used when any party would be "unduly prejudiced thereby."

It is the general rule that laws which become effective during the pendency of judicial review proceedings control those proceedings, *Bradley* v. *Richmond School Board*, 416 U.S. 696 (1974); *Republic Steel Corp.* v. *Costle*, 581 F.2d 1228 (6th Cir. 1978). This rule also holds true for the application of Federal regulations in administrative proceedings. *Thorpe* v. *Housing Authority of Durham*, 393 U.S. 268 (1969). The Supreme Court has only recognized exceptions to this general rule to prevent "manifest injustice." *Thorpe* v. *Housing Authority*, *supra* at 282; *Greene* v. *United States*, 376 U.S. 149 (1964). The Administrator departed from this rule in his decision in *U.S. Pipe*, *supra*. There he set forth a fixed rule that permits would always be governed by rules in effect at the time of initial permit issuance, and would be unaffected by changes in applicable regulations during permit appeals. The Administrator concluded that:

> To allow permit limitations and conditions to change according to a "floating" standard or guideline during the pendency of a permit review proceeding would be highly disruptive and counter-productive. [Id. at 117]

The Fifth Circuit approved the Administrator's position in *Alabama ex rel. Baxley* v. *EPA*, *supra*. However, neither the Administrator nor the Fifth Circuit discussed *Bradley* or *Thorpe*,

and EPA can only speculate as to what result would have been reached had those decisions been brought to EPA's and the court's attention.

EPA recognizes the potential for disruption which a continuously shifting field of applicable regulations could bring to permit proceedings. However, the Agency now believes that the *per se* rule established by the Administrator in the *U.S. Pipe* decision was too inflexible and in certain respects unlawful. EPA is clearly obligated under *Bradley* and *Thorpe* to apply new statutory law to administrative proceedings which are not final, unless a contrary legislative intent can be discerned. However, courts will give deference to EPA's own regulations controlling the application of EPA rules to pending proceedings. See *Greene* v. *United States, supra* at 160–162. Moreover, the courts will not apply the *Thorpe* rule blindly where to do so would result in unnecessary delay. *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402, 418–19 (1971). Accordingly, EPA has preserved the general rule enunciated in the *U.S. Pipe* decision, but has modified it to require the Presiding Officer to apply intervening statutory requirements, and to allow him to apply new regulations where to do so would not unduly prejudice any party. The Agency expects that motions to apply new regulations will be liberally granted where to do so will shorten the hearing or resolve issues (such as determination of BCT or BAT on a case-by-case basis) that otherwise would consume considerable staff and hearing time. See *Public Service Co. of Indiana* v. *FERC*, 575 F.2d 1204 1220–21 (7th Cir. 1978).

§ *124.90 Interlocutory appeal.*

The present practice of deciding legal issues separately through referral to the Office of General Counsel has been eliminated. Instead, these issues will be subject to normal interlocutory appeal procedures. The regulations also provide that the General Counsel's Office will play a major role in deciding any legal issues raised in such appeals. This approach was suggested in the comments of the Utility Water Act Group. Similar changes have been made to § 124.101.

This approach presupposes that members of the General Counsel's Office who take part in deciding interlocutory appeals under this provision will not have performed "investigative or prosecutorial functions" in the hearing at issue, and will not be organizationally subordinate to those who have. 5 U.S.C. Section 554(d). In the normal course lawyers in the General Counsel's office do not perform such functions. In NPDES cases where they do, the lawyer in question and all that lawyer's subordinates will be barred from advising the Administrator.

§ *124.101 Appeals to the Administrator.*

(1) The proposed regulations would have provided two administrative appeals from ALJ decisions—once to the Regional Administrator and then after that to the Administrator in Washington. In the final regulations the opportunity to appeal to the Regional Administrator has been eliminated and only the appeal to the Administrator has been retained. This will make the process far less cumbersome. Regional Administrators will still be able to express their views by advising on the terms of draft and final permits and either by participating in the evidentiary hearing or by declaring themselves part of the decisional body (and thus subject to the *ex parte* rules of § 124.78) and advising the Administrator.

(2) Comments were received objecting to the provisions in this section for the Administrator to consider new issues on appeal or to base a decision on material erroneously excluded. These provisions were inserted to provide a measure of flexibility in the administrative decisionmaking process. Of course they should not be invoked where the matters to be considered are of a type that properly should have been subject to an evidentiary hearing.

(3) A number of commenters objected to the showing of substantial issues in justification of an appeal to the Administrator has a very broad power § 124.101. We agree with those commenters who stated that the Administrator has a very board power of review of decisions in NPDES permit cases. However, EPA's intent in setting up this program is that: (1) this power of review should be only sparingly exercised; (2) most permits be finally adjudicated at the Regional level; and (3) review by the Administrator be confined to cases which have precedential importance for the program as a whole. The threshold showing as proposed was intended to further that purpose; and thus has been retained.

(4) Another commenter asked about the availability of interlocutory judicial review of decisions such as new source determinations and section 316(a) determinations.

EPA's position is that judicial review is only available for final permits for which appeal to the Administrator has been sought under §124.101. Except in the special cases explicitly described in §124.56 all other decisions in connection with a permit are subject to challenge and revision in future administrative proceedings. They represent cases in which the administrative process is therefore not complete, and are not ripe for review because they fall under the requirement to exhaust administrative remedies.

§§*124.111 through 124.127 Non-adversary procedures for initial licensing.*

The APA allows decisions on the initial grant of a license or variance to be made by procedures that are much less adversarial than strict court room procedures, even when a formal hearing is required. The regulations use this provision of the APA to move away from traditional format hearings in which EPA and other parties present separate cases before a single hearing officer. Instead, under Subpart I, a panel of EPA employees with expert knowledge of, or responsibility for, the subjects involved will be present at the hearing and will question the parties, subject to over-all control of the proceeding by the Presiding Officer, an Administrative Law Judge. We expect that in some cases no Agency trial staff will be designated, although the regulations allow one to be named if necessary. Instead, the Agency will prepare a draft response to the permit application, and the information contained in the application and the draft response will be the focus of attention at the hearing. The hearing itself will be divided into a "legislative" phase—at which the parties can present views and arguments to the panel and engage in a colloquy, and an "adjudicative" phase—at which formal cross-examination can be ordered if certain threshold conditions are met. After the hearing, the panel will prepare a recommended decision which may be appealed to the Administrator. Though the Administrator will make an independent review of the decision upon deciding to review it, the Administrator would be free to consult with panel members. EPA believes that this procedure complies with the literal language of the "initial licensing" provisions of the APA and fits the purpose of those provisions more closely than existing procedures.

Under the APA, in cases of formal rulemaking, ratemaking or initial licensing, agencies have more latitude than in other formal cases to require the submission of evidence in written form. 5 U.S.C. Section 556(d). An initial decision by the "independent" presiding Administrative Law Judge (ALJ) is not

required; instead any "responsible employee" of the Agency may recommend a decision. 5 U.S.C. Section 557(b)(1).

As the preamble to the proposal explained, these exemptions were provided for initial licensing because the decisions involved were complex and policy-dominated and thus were thought to be "like rulemaking." Since these decisions did not involve accusing anyone of wrongdoing, there was no reasons for "separation of functions" within the Agency or for an initial decision by a statutorily independent individual. Rather, the complexity of the problems required that the Agency be able to draw on its staff experts freely without being hampered by such artificial barriers. *APA: Legislative History;* S. Doc. 248, 79th Cong., 2d. Sess. 204, 229, 262, 361 (1946) (henceforth *APA Leg. Hist.).*

The use of a panel and the omission or deemphasis of an EPA trial staff in proceedings under these regulations would make their structure conform more closely to the non-accusatory nature of the decision in question. The form of proceeding would correspond to its function—a group of EPA employees exploring the issues to determine what decision to make or recommend—rather than to a courtroom trial.

The comments raised a number of closely intertwined objections to the legal justification for this approach and to the implementation of it. The most important general objections are discussed first, followed by a discussion of comments relating to individual sections.

(1) General comments.

(a) *First objection—issuing NPDES permits to existing sources is not "initial licensing".*

The commenters who raised this issue made little effort to support it, and it suffers from the initial weaknesses of being contrary to the plain language of the statute, consistent EPA practice and the relevant judicial opinions.

The APA defines "license" to include:

> The whole or a part of an agency permit, certificate, registration, charter, or other form of permission, 5 U.S.C. section 551(8),

and "licensing" as including:

> Agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license, 5 U.S.C. section 551(9).

Though "initial" is not defined, its natural meaning (according to Webster's Third World Dictionary, unabridged 1947) is "of or relating to the beginning," or, in other words to the *first grant* of the license in question. Neither this definition nor the statutory language offers any basis for distinguishing between first grants of licenses to existing sources and those which are physically new.

In the more than six years since the NPDES system was authorized by the Federal Water Pollution Control Act Amendments of 1972, EPA has consistently treated the first grant of an NPDES permit to an existing source as "initial licensing" and this reading has been upheld by both courts which have considered the point. *United States Steel Corp.* v. *Train,* 556 F.2d 822, 834–35 (6th Cir. 1977); *Marathon Oil Corp.* v. *Environmental Protection Agency,* 564 F.2d 1253, 1265 (9th Cir. 1977).

Analogous provisions of the APA confirm that the exemptions made available for "initial licensing" may properly be used even when an existing source is being permitted. Whatever the examples of "licensing" Congress had in mind, Congress made the same exemptions available for all cases of ratemaking, and ratemaking of course in the majority of cases would involve existing companies.[3]

(b) *"Separation of functions" should be followed in initial licensing.* "Separation of functions" in the strict sense will be observed in proceedings under this Subpart. Whenever an agency trial staff is named to perform an advocacy role in the hearing, separation of functions requirements will apply to it (§ 124.78).

The comments on this point argued by analogy that persons involved in preparing the draft permit should not sit on the panel, and that members of the panel should not advise the Administrator on appeal. The APA contains no prohibition on either of these practices. Nevertheless, we have discussed them as though the literal bar on separation of functions in the narrow case was concerned.

The legislative history of the APA contains a number of statements cautioning agencies against overbroad application of the exemptions which the text of the statute provides from "separation of functions" requirements and from the requirement to prepare a proposed decision before making a final one. Several commenters argued that these statements demonstrated that NPDES permitting is not the kind of "initial licensing" Congress had in mind, and that accordingly, these exemptions should not be applied to it.

We disagree. As the preamble to the proposal stated, these exemptions were provided for cases which involved a complex array of factual and policy issues requiring a division of labor among the staff, and which were not "accusatory". NPDES permitting easily meets both tests.

Particularly where a permit to a major source is concerned, questions can arise concerning the nature of given industrial processes, their similarity to or difference from other industrial processes, and how this should affect control requirements or classification under effluent limitations guidelines. For section 301(c) determinations, EPA must consider the economic impact of the proposed discharge requirement, and alternative discharge requirements, on the plant itself and the company. Section 316(a) thermal variances can require consideration of the dispersal and persistence of the discharge in the receiving waters, and its effect there on numbers of different species and the ecosystem generally. In many cases, certainty on these points will not be attainable; yet the final judgment will depend on highly discretionary judgments on a variety of legal and factual issues.

In such cases, the final decision will depend largely on "policy" choices about how to choose among uncertainties and weigh various facts against each other, just as it does, for example, when economic information of various sorts must be analyzed for rate-setting purposes, or information on traffic growth, company and community economic health, and other factors must be assessed for purposes of CAB or ICC route awards. These latter decisions are clearly among those which Congress meant to exempt from "separation of functions" requirements, and NPDES permitting in our view should be similarly classified.

Similarly, the initial grant of an NPDES permit is "non-accusatory" like these other decisions because it is the first time the Agency will have confronted the task of applying the standards of the statute to the particular discharge at issue. The Agency will have not made a prior decision to which it might feel compelled to adhere, as could be the case in renewal licensing, and whatever decision is made will not amount to a finding of legal wrong-doing.

The legislative history of the APA, we believe, recognizes these points. Both the House and Senate Reports say at

[3] Under 5 U.S.C. sections 551 (4) and (5), "rulemaking" includes "ratemaking". 5 U.S.C. section 554, which contains the APA's separation of functions requirements, states in subsection (a) that it only applies to "adjudication", while sections 556(d) and 557(b) contain parallel exemptions from other APA requirements for rulemaking and initial licensing.

one point that "instances" of the exempted categories may arise which "tend to be accusatory in form *and* involve sharply controverted factual issues" and where the exemption contained in 5 U.S.C. section 554(d) from separation of functions should not be invoked (emphasis added). As this preamble explains, the whole purpose of EPA's new provisions is to avoid being "accusatory in form" while for the reasons just given, EPA does not believe they are accusatory in substance. The logic of these passages accordingly does not apply.

Both the House and the Senate reports also say that:

> The alternative intermediate procedure [in 5 U.S.C. section 557(b) (1) and (2)] which an agency may adopt in rulemaking or determining applications for initial licenses is broadly drawn. But even in those cases, if issues of fact are sharply controverted or the case or class of cases tends to become accusatory in nature, sound practice would require the agency to adopt the intermediate *recommended* decision procedure, *APA leg. Hist.* p. 273, accord, p. 210 (emphasis added).

This language only states that agencies should not omit an intermediate decision *entirely* under section 557(b)(2) in the described cases. There is no indication that an intermediate decision by an ALJ would be required; indeed, the implication is to the contrary. The text of 5 U.S.C section 557 provides that as a general matter ALJs in adjudicatory proceedings must render "initial" decisions, but that in rulemaking and initial licensing any "responsible employee" may instead "recommend" a decision. Yet the quoted passages refer to a "recommended" decision (by a "responsible employee"), not an "initial" decision (by an ALJ).

Under this reading, the quoted passage does not pertain to the procedures at issue here, which provide for a recommended decision by the panel in every case.

In addition to these reasons based on the letter of the APA's language and legislative history, we believe EPA has made a legitimate effort to respond to the spirit of the statute. First, the procedures are not mandatory for all cases of initial licensing, and so the Agency will retain discretion to follow more conventional procedures in those cases where they are most appropriate. In general, EPA believes that Regions should consider using these procedures in complicated cases where the record will be long and technical. These are the cases that will best justify the work of assembling and using a panel, and that will profit most from the increased reliance on procedures other than cross-examination. Cases with few issues or issues that are easily focused should be handled through the more customary procedures. However, EPA also believes that Regions must have discretion to make this choice in individual cases, and that the only proper question for judicial review should be whether the procedure actually selected resulted in a legally satisfactory hearing, not whether some other procedure might have been better.

Second, the procedures themselves have been structured to avoid as much as possible creation of an "adversary" or "accusatory" mentality through overreliance on courtroom devices. Finally, in response to comments, the regulations have been rewritten to ensure that there will be independent review of a permit during Agency decisionmaking, but in a way that avoids the costs of formal separation of functions.

The regulations do this by stating that any hearing panel on a permit must include at least two persons who had no connection with preparing the draft permit, and that when the Administrator reviews a permit, any persons assisting him or her directly in preparing the opinion must be "without substantial prior connection with the matter." This will ensure that at successive levels of review new people will take a fresh look at the permit, and that the same small group will not be in charge of decisionmaking from start to finish.

However, no restriction has been placed on who these new people may talk to. To do that would be in effect to re-adopt separation of functions with all its inefficiencies. Instead, the effort has been to build a system of "checks and balances" within the internal structure of the Agency that can serve the same purpose in a less costly manner. See II K. Davis, Administrative Law Treatise 11.10 at 87 (1958).

For these reasons, we believe the elimination of formal "separation of functions" from the new initial licensing procedures is well within the discretion recently recognized by the Supreme Court. "Absent constitutional constraints or extremely compelling circumstances, the administrative agencies should be free to fashion their own rules of inquiry and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties", *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 98 S.Ct. 1197, 1211 (1978) citing and endorsing language from two prior opinions.

(c) *Third objection—variances are not initial licenses.* Many comments argued that the proposed procedures went too far in applying the APA "initial licensing" provisions to "the first decision on any variance applied for by a discharger." We believe our position is supported both by the language of the statute and by its purposes.

Under the APA, " 'license' includes the whole *or part* of any agency permit . . . [or] statutory exemption," and " 'licensing' includes agency process respecting the . . . amendment, modification, or conditioning of a license." (emphasis added) The language of the statute, then, furnishes no reason why a variance cannot be regarded as a "license" in itself, either as "part" of the existing permit or as a "statutory exemption" from the requirements. Granting a variance similarly fits under the definition of "licensing" both because the variance can be viewed as a license in itself and because in any event the proceeding results in the actual or potential amendment or modification of a permit.

This line of construction could be pressed so far that it gave results contrary to the main purpose of the statute. However, where the initial grant of a variance is concerned, the results of this approach are in harmony with those purposes.

The first decision on a statutory or administrative variance granted to a source will be the first occasion on which EPA will be applying the policy of that particular provision of the statute or authorizing regulations to the given discharge. Very often the factual and policy considerations relevant to a decision on that variance will be just as wide-ranging, and just as incapable of precise resolution, as the considerations bearing on the initial grant of the basic permit. For example, variances under sections 301(g), 301(h) and 316(a) of the Act depend on predicting the impact of the uncontrolled discharge on the entire relevant ecosystem, while variances under section 301(c) depend on an assessment and evaluation of the cost of technology for a given plant and on drawing the conclusions that installing this technology would be "beyond the economic capability" of the source and that alternate requirements will result in "reasonable further progress" toward full control.

Such decisions therefore, will often fit the tests put forth above for determining when a decision is "initial licensing." Indeed, in *Seacoast Anti-Pollution League* v. *Costle*, 572 F.2d. 872, 875 n.3, 879 (1st Cir. 1978), (henceforth *Seabrook*) the court held in effect that it made little difference whether the *Seabrook* proceedings were characterized as the initial grant of a

permit under section 402 of the Act or the initial grant of a variance under section 316(a)—the procedures would be the same and would be governed by the "initial licensing" provisions of the APA.

The one 21 year old case cited against this conclusion, *Chotin Towing Corp.* v. *Federal Power Commission*, 250 F.2d. 394 (D.C. Cir. 1957) is not on point. That case held that a proceeding to abandon a pipeline was not "initial licensing." The abandonment decision would presumably be made under the same statutory provisions the license was granted under, and would therefore not represent the first time the agency took a position on those provisions in the context of the particular pipeline. By contrast, variances under the Clean Water Act result from the application of statutory provisions on which the Agency will not previously have taken a position, and which therefore fit the purpose of the "initial licensing" provisions the way the abandonment proceeding at issue in *Chotin Towing* did not.

Experience, however, has shown that hearings for variance are seldom necessary. For instance, in all the fundamentally different factor variances decided to date, there has not been a question of fact at issue but if a particular situation applied to a quideline. In such cases, where facts are not at issue, the decision on the variances may be handled without a hearing but on the papers filed by interested parties.

(d) *Fourth objection—cross examination would be unduly limited.* Many comments asserted that the test for being granted cross-examination set forth in these procedures was too strict. The statute, however, states only that cross-examination must be allowed to the extent required for a "full and true disclosure of the [material] facts." A long line of commenters have criticized the tendency of formal administrative hearings to allow long and unproductive cross-examination. The procedures set forth in these regulations do no more than set forth in a manner essentially endorsed by one Court of Appeals, a method by which the standards of the statute may be particularized. *Seabrook* at 880. How rigorously they are applied will depend on the factual circumstances of each particular case.

Commenters also asserted generally that the restrictions on cross-examination in these procedures showed that EPA was prepared to ignore important factual questions in initial licensing.

On the contrary, EPA believes that resolving factual questions may often be important in initial licensing, though there may also be many cases where their resolution is not governing or where they cannot be resolved. However, there are many devices other than cross-examination for such questions. Written comments and panel hearings are two of them. These regulations have been structured to encourage the use of such alternative ways of resolving such important factual questions before the more cumbersome tools of cross-examination are called on.

On a more specific point, several commenters asserted that in requiring testimony to be submitted in written form in initial licensing, the regulations violated the holding in *Seabrook*. However, on March 24, 1978, Administrator Costle issued a Response to the Remand Order in this opinion. In the document that Administrator said:

> The Court of Appeals disapproved the manner in which I requested written information * * * after the initial hearing had been held and when the case was on appeal to me.
>
> Under the Administrative Procedure Act, the submission of evidence in written form may be required in cases, such as this one, concerning the initial grant of a license or permit. The court acknowledged that but held that this result had to be qualified by the special language of the Federal Water Pollution Control Act, which requires an "opportunity for public hearing" in permit cases.
>
> As I read the court's opinion, their holding on this point was motivated by a concern that all evidence received at an adjudicatory hearing be subject to a full opportunity for public comment and potential cross-examination. * * * I do not believe the court meant totally to exclude the use of written testimony in initial licensing cases such as this.
>
> The examples of abuse of the "written evidence" provision the court gave in its opinion all relate to evidence received *after* the hearing. Here I can appreciate the conclusion that evidence so received may, as a practical matter, be less exposed to public comment than it should be, even if a formal opportunity for cross-examination is provided.
>
> No such danger would arise if the evidence is provided before the hearing and can be the subject of comment, argument, and potential cross-examination at it. In addition, the hearing would provide a chance to correct any unanticipated deficiencies that might arise. Cf. Attorney General's Manual on the Administrative Procedure Act. P. 78. (1947).
>
> By contrast, there is at least a possibility that an absolute right to present direct testimony orally could be abused for purposes of delay in complicated or controversial cases.
>
> The trend of the law has been to allow more latitude, not less, to agencies to require the submission of complicated technical material in written form to increase efficiency and avoid delay, as long as an adequate opportunity for public challenge and dispute was preserved. See 40 *Fed. Reg.* 40682, 40703 (Sept. 3, 1975); 41 *Fed. Reg.* 51716–17 (Nov. 23, 1976).
>
> Beyond these considerations, I believe a careful reading of the conceptual framework of the court's opinion also supports the position I have adopted.
>
> The question of the extent to which written evidence is proper under the APA only arises when an initial licensing decision must be made by formal adjudicatory procedures. Those procedures are only applicable where the statute (or in some cases, due process) requires them. The court held that where adjudicatory decisions are concerned, an intent to hold formal hearings should generally be inferred whenever the statute requires a "hearing" in connection with that decision.
>
> However, to hold that written evidence may not be required in initial licensing cases if the governing statute requires a "hearing" would be inconsistent with that basic analysis. The "written evidence" provision only applies when the statute requires a formal hearing. It was deliberately inserted to govern such hearings. To say that it does not apply whenever the statute at issue requires a "hearing" would be in effect to say that it never or almost never applied, since a statutory "hearing" requirement is necessary to make the APA applicable in the first place. It would be in effect to say that the same statutory reference that makes formal hearing procedures applicable generally also makes the "written evidence" provision for initial licensing cases inapplicable, even though Congress expressly inserted that provision as a general rule for formal hearing procedures.
>
> Though the Federal Water Pollution Control Act does not simply require an opportunity for a hearing, but an opportunity for a "public" hearing, I do not believe that the presence or absence of this one word should change the outcome of the analysis. There is no indication Congress intended such a sweeping result to follow, and the term has never been understood to carry this meaning. Indeed, virtually all hearings are "public" by definition and to the extent "public" has any explicit connotation, I take it to be one of less, rather than more, formality—a hearing to receive *public* views and complaints, rather than to generate a record for decision.
>
> Instead, I take the court's opinion to mean that where the statute requires a "public hearing" any written evidence received must come in before that hearing begins, or at it, so that it can be the subject of potential cross-examination, or other types of challenge, in a public forum.

This interpretation was not challenged in the remand proceedings and has now been decided in EPA's favor by the First Circuit. It is adopted here.

A related change has been made in consequence. Comments came in asking about the relationship between "reply comments" under proposed § 124.119 and post-hearing briefs under § 124.123.

Since under the interpretation here adopted, reply comments could not contain testimonial material in any event, the "reply comment" provision and the section on post-hearing briefs perform the same function and the "reply comment" provision has been deleted.

Some commenters also argued that the use of a panel violates the "on the record" decision requirement of the APA. However, as the court in the *Seabrook* case explicitly recognized, consultation among experts is legal and desirable in decisionmaking in technical areas. *Seabrook* at 872, 880–81. The statutory background discussed above explicitly contemplates that the decision in initial licensing cases may be the work of a group. See especially *APA Leg. Hist. at 229.*

(e) *Fifth objection—there is no need for two procedures.* Several persons urged that having two types of procedures for making decisions on "initial licensing" would be cumbersome and create confusion beyond any purpose it might serve.

We disagree. Procedures analogous to those set forth in Subpart I have been used in other contexts at EPA and have worked well. They have proved easy to follow and did not require undue explanation. The costs of delay and lack of coordination in formal adjudication can be so great that a new approach would be justified if it saved time and effort in only a few cases. We think the savings from this approach will be much more considerable than that.

The Natural Resources Defense Council suggested that these procedures might be adapted to all NPDES permit decisions, which would make the creation of separate initial licensing procedures unnecessary. Though this would be desirable as a matter of policy, in EPA's judgment the legal differences between initial and non-initial licensing under the APA are too great to make such an approach feasible. However, § 124.111(a)(3) has been amended to allow applicants who do not come within the definition of "initial licensing" to voluntarily be subject to these procedures instead of Subpart H. A request under § 124.111(a)(3) made during the public comment period, if granted, can have the effect of this Subpart superseding Subparts E and G.

(2) *The Extent of Disagreement.* Despite the number of comments received on these proposals, EPA believes the disagreement is more about means than about ends. This emerges clearly from the following comments of the Utility Water Act Group, which submitted the longest and most detailed analysis of these procedures. As an alternative to the proposed procedures, they suggested these steps:

> Hearing panels, with independent decision makers [sic] as suggested below, could be used either during the informal public hearings on draft permits or, in proper cases of initial licensing, during the adjudicatory hearing itself. They might, under the supervision of the presiding officer, be used to write some or all of the technical portions of the decisions involved. Separate technical advice (perhaps drawn from the same pool of technical persons involved in the hearing panels, but not including those persons involved in the particular case in question) could be provided to the Administrator on appeal. Thus, the advantages of technical input to the decisionmakers could be combined with independence of decisionmakers, both initially and on review. This would fill the Agency's needs while also providing fair and imparital decision [sic] making.
>
> In the evidentiary hearing process, presiding officers can be authorized to impose very abbreviated cross-examination rights where proper initial licensing cases are involved, subject to the same sorts of tests articulated now in the separate [initial licensing] procedures. The Agency staff would function as party to these proceedings. But the rules could specifically require that they eschew an adversary position and act affirmatively to ensure that the record is adequate and that a reasoned and objective Agency decision results from the process. Participating staff members must be prepared to confess error, after hearing the evidence, on some positions which the staff originally took in the draft permit. [Utility Water Act Group Comments pp. 252–53.]

These are the same basic ends EPA seeks through the special "initial licensing" procedures promulgated today. The only differences are that the Agency believes that a strict, courtroom type separation of functions is too costly in time, resources, and the quality of the resulting decision to be compatible with that goal, and that a "non-adversary" agency staff can only be achieved by removing it from participation in the inherently adversary setting of a trial-type hearing.[4]

*Comments on Specific Sections*

*§124.111 Applicability.*

The major questions under this section, regarding the treatment of existing sources, variances and the need for an alternative procedure, have been discussed above. A new provision has been added to allow parties to elect to follow this procedure in cases that do not involve initial licensing.

One commenter raised the question whether a permit to a source that has changed owners would be considered an "initial license" potentially subject to these procedures. The answer is "No"—it is the first permit to the physical facility, not to the owning entity—that is significant under the purposes of the "initial licensing" provisions discussed above.

*§124.112 Relation to other Subparts.*

A number of commenters point out that the procedures in this Subpart were not articulated in as much detail as the other evidentiary hearing provisions, and asked that more provisions be added.

This lesser degree of formality was to some extent deliberate on EPA's part, since these proceedings are meant to be relatively less "judicialized" in form than those under Subpart H. For that reason, not all the suggestions on this point have been accepted. However, a substantial number have been, and therefore §124.112 has been added to specify the provisions from Subpart E, F, G and H that are incorporated in this Subpart I by reference.

*§124.116 Notice of hearing.*

Under the proposal, the Regional Administrator would have issued the decision in all cases after the hearing. This proposal left open the question of the role of the Presiding Officer in preparing that decision. To correct this ambiguity the regulations have been rewritten to provide that the Regional Administrator must choose, at the time the notice of hearing is issued, whether the decision will be issued in his or her name or in the name of the Presiding Officer. If the Presiding Officer is chosen, then the analysis and conclusions of the initial decision will be wholly the responsibility of the Presiding Officer, though consultation with the panel and consideration of their views will be expected. If a Regional Administrator decision is chosen, the Presiding Officer will have no obligation to take part in preparing it, although he or she may take part.

*§124.120 Panel hearing.*

(1) Commenters attacked the provision in this section and §124.121 requiring the Presiding Officer to consult with the panel before making rulings on cross-examination. They argued this might prejudice the independence of the Presiding Officer.

The APA allows decisions in "initial licensing" cases to be "institutional" decisions that draw on the training and experience of a number of different staff members, rather than the work of the Presiding Officer alone. These staff

[4] For further discussion of these and other points relating to these "initial licensing" procedures see Pedersen "The Decline of Separation of Functions in Regulatory Agencies", 64 Va. L. Rev. 991 (1978).

members must work from the record in preparing their decision. Under these regulations those staff members will also be members of the hearing panel or its support staff. Because the panel members will therefore have a stake in the contents of the record from which they will all have to work, it is appropriate for the Presiding Officer to consult them on key decisions that may help to shape that record. The Presiding Officer, of course, will retain the final power to rule on these matters.

(2) Several commenters argued that the entire panel be present at any cross-examination under this section. This comment has been accepted, so that all panel members, to the extent feasible, be present

*Subpart J—Miscellaneous*

*§124.131 Public access to information.*

A number of commenters suggested that trade secret information either should not be disclosed to other persons in NPDES proceedings, or should only be disclosed subject to specific safeguards. The handling of trade secret information has not generally been a problem in NPDES proceedings, in part because the statute restricts the types of information that qualify.

However, to remove any ambiguity EPA has added a reference to EPA's general regulations on this point to this section to make clear that they continue to govern except to the extent that the Clean Water Act mandates disclosure.

*§ 124.132 Delegation of authority: time limitations.*

Quite a few commenters urged that EPA should set additional deadlines for its actions under this Part, or that failure to meet the deadlines already established should have more drastic consequences. These comments have not been accepted. The Agency's workload, commitments, and future resources are too unpredictable to make it advisable for any more binding deadlines to be set. One of the major purposes of these revisions is to speed the processing of permits and that result should be evident whether or not more deadlines are established.

*§ 124.133 EPA Headquarters approval of stipulations or consent agreement.*

Some commenters also question the provision that all stipulations be approved by the EPA Deputy Assistant Administrator for Water Enforcement. This provision has been retained because cases which are settled upon stipulation after having been set down for hearing are apt to be the major controversial cases for which a specific provision for central review is appropriate. However, it has been rewritten and renumbered to make clear that only stipulations which settle the case or a major portion of it are subject to this provision.

*§ 124.135 Effective date.*

While Parts 121, 122, 123, 125, and 403 will be effective 60 days after issuance, this is a new section which states that Part 124, with some exceptions, shall not be effective until 120 days after issuance. This extra time is necessary to allow EPA Regional Offices and NPDES States to change internal operating procedures as necessary.

*V. Part 125—Criteria and Standards for the National Pollutant Discharge Elimination System*

A. *What Does This Part Do?* Part 125 contains requirements or standards which must be applied by EPA or approved States in making specialized types of permit determinations. One or more of these determinations must often be made in the course of permit issuance or modification.

B. *How Does This Part Relate To Existing Regulations?* Three of the Subparts contained in this Part are taken from existing, i.e., former, EPA regulations. Subpart B (proposed Subpart C) establishes the criteria for issuance of permits to aquaculture projects. These criteria are substantially the same as the criteria in former 40 CFR 115.10. The other requirements of former 40 CFR Part 115 are now contained in various sections of Part 122 and 124. These regulatory revisions were made in response to the 1977 amendments to section 318 which stated that such permits must now be issued pursuant to section 402 of the Act. Since the requirements of former Part 115 are now contained in these regulations, Part 115 is deleted. Subpart H (proposed Subpart I) establishes the criteria for determining alternative effluent limitations under section 316(a) of the Act. The criteria are substantially the same as in former 40 CFR Part 122. Since the requirements of former Part 122 are now contained in these regulations, former Part 122 is deleted. Subpart J (proposed Subpart K) establishes the criteria for extending compliance dates under section 301(i) of the Act. This Subpart J incorporates the interim final section 301(i) regulations published on May 16, 1978.

Two of the Subparts contained in Part 125 were proposed for the first time on August 21, 1978. Subpart A establishes criteria and standards for imposing technology-based treatment requirements under section 301(b) of the Act. Subpart D (proposed Subpart E) establishes criteria and standards for determining fundamentally different factors under sections 301(b)(1)(A), 301(b)(2)(A), 301(b)(2)(E) and 307(b) of the Act.

One Subpart contained in this Part was proposed for the first time on September 1, 1978. Subpart K (proposed reserved Subpart L) establishes criteria and standards for imposing best management practices for ancillary industrial activities under section 304(e) of the Act.

C. *How Does This Part Relate to the August 21, 1978 Proposed Regulations?* The following is a discussion of the significant comments received and the basis for revisions made to Part 125 of the proposed regulations. Minor editorial changes have been made in all sections.

*Proposed Reserved Subparts*

*Proposed reserved Subpart B—EPA Objection to State-Issued Permits Under Section 402(d)(2) of the Act.* This Subpart was reserved for the provisions of former 40 CFR § 124.42. EPA has decided to move these requirements to § 123.23 so that all requirements relating to State permit programs will appear in that Part.

*Proposed Reserved Subpart L—Criteria and Standards for Best Management Practices Under Section 304(e) of the Act.*

This Subpart was reserved in the August 21, 1978 proposal. On September 1, 1978, EPA proposed regulations establishing criteria and standards for best management practices under section 304(e) of the Act. These regulations are now incorporated in part in the final regulations as Subpart K. A more detailed discussion of this Subpart is found in the preamble discussion of Subpart K.

**Other Proposed Reserved Subparts.**

Other proposed reserved Subparts remain reserved pending development of criteria and standards. These Subparts are relettered as follows:

**Subpart C (proposed Subpart D)—Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology**

**Under Section 301(k) of the Act.**

**Subpart E (proposed Subpart F)—Criteria for Granting Economic Variances from BAT Under Section 301(c) of the Act.**

**Subpart F (proposed Subpart G)—Criteria for Granting Water Quality Related Variances Under Section 301(g) of the Act.**

**Subpart G (proposed Subpart H)—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Act (criteria proposed as 40 CFR 233, Subpart B on April 25, 1978).**

**Subpart I (proposed Subpart J)—Criteria Applicable to Cooling Water Intake Structures Under Section 316(b) of the Act.**

**Subpart L (proposed Subpart M)—Criteria and Standards for Imposing Conditions for the Disposal of Sewage Sludge Under Section 405 of the Act.**

### Subpart A—Technology-Based Treatment Requirements

This Subpart establishes the criteria and standards for imposing technology-based treatment requirements of the Clean Water Act into permits under section 301(b). It clarifies and sets forth in regulatory form the long-standing EPA policy that these technology-based treatment requirements represent the minimum levels of controls under section 402, and that they cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators (although such techniques may be used to achieve water quality standards in certain limited circumstances).

Technology-based requirements may be imposed in permits through the application of an EPA promulgated effluent guideline or on a case-by-case basis under section 402(a)(1) of the Act. Case-by-case determinations must consider: the factors listed in section 304(b) of the Act for development of EPA effluent guidelines; EPA draft or proposed development documents or other guidance; and other appropriate factors.

Commenters had little difficulty with the requirement that EPA promulgated effluent guidelines limitations must be applied in permits but several argued that EPA cannot require technology-based effluent limitations to be included in State-issued permits until EPA has promulgated effluent guidelines, citing *Ford Motor Co.* v. *EPA*, 567 F.2d 661 (6th Cir. 1977) and *Washington* v. *EPA*, 573 F.2d 583 (9th Cir. 1978). EPA disagrees and believes that these commenters misread those cases. EPA believes that issuance of these regulations satisfies the criteria expressed by the court in *Ford Motor Co.* v. *EPA*, (which indicated that EPA may "veto" State-issued permits only on the basis of validly promulgated EPA regulations or clear statutory requirements). For example, § 125.3 contains a clear and explicit requirement that even if effluent limitations guidelines have not been promulgated for a class or category of point sources, State and Federal permit issuers are obligated to establish technology-based permit requirements. See *United States Steel Corp.* v. *Train*, 556, F.2d 822 (7th Cir. 1977). As to the decision of the Ninth Circuit in *Washington* v. *EPA*, the court there held that the requirements of sections 301 and 304 of the Act are not self-executing, and that there were no regulations which would support a veto by EPA. The Agency believes that these regulations provide the support the court found lacking in *Washington* v. *EPA*, and that States can properly be required to set case-by-case technology-based effluent limitations even where EPA has not been able to promulgate effluent limitations guidelines. This requirement is also supported by the decision of the Sixth Circuit in *Republic Steel Corp.* v. *Costle*, 581 F.2d 1228 (1978).

### Subpart B—Aquaculture

Subpart B (proposed Subpart C) sets out the criteria and standards for approving aquaculture research projects. The final version is essentially unchanged from the proposal except for § 125.11(a)(4). Two commenters pointed out that the proposal requiring the crop be fit for human consumption was too strict, in that it precluded crops which may be consumed by animals or plants. Therefore, this requirement was changed to require only that the crop not have a significant potential for human health hazards resulting from its consumption. As stated earlier, this Subpart incorporates the criteria found in former 40 CFR Part 115, and since the other requirements of 40 CFR Part 115 have been incorporated into the NPDES regulations revision, 40 CFR Part 115 is deleted.

### Subpart D—Fundamentally Different Factors Variances

Subpart D (proposed Subpart E) establishes the criteria for determining whether a particular industrial discharger should be subject to more or less stringent effluent limits than those required by national effluent limitations guidelines or pretreatment standards promulgated under sections 301(b)(1)(A), 301(b)(2)(A) and (E), and 307(b) of the Act ("national limits"), because of site-specific "fundamentally different factors". When EPA establishes national limits under these sections of the Act, EPA considers a great deal of information regarding the appropriate statutory factors from various dischargers in an industrial category. In some cases, however, data on a particular discharger may not be available or may not be considered. It may therefore be necessary, on a case-by-case basis, to vary the nationally prescribed limits for a particular discharger if the relevant statutory factors relating to that discharger are shown to be fundamentally different from those previously considered by EPA.

No discharger, however, may be excused from the Act's requirement to meet BPT, BCT, BAT or a pretreatment standard through this variance clause. A discharger may instead receive an individualized definition of such a limitation or standard where the nationally prescribed limit is shown to be more or less stringent than appropriate for the discharger under the Act.

Subpart D is substantially similar to proposed Subpart E. However, the provisions have been reorganized and edited for greater clarity and have been revised in certain respects in response to public comments.

In response to some comments, EPA has deleted proposed § 125.26(a)(9). This paragraph would have prohibited a variance for a discharger if, as a result of the variance, other dischargers (or nonpoint sources) would be subject to additional controls through water quality wasteload allocations. EPA agrees that potential changes to wasteload allocations are irrelevant when considering the appropriate technology-based limitation for a particular discharger under the Act.

EPA has also modified proposed § 125.26(b)(3) (now § 125.31(d)(3)) by deleting the requirement that a treatment technology must cause a violation of State or Federal law to be considered an adverse non-water quality impact. EPA recognizes that a discharger's non-water quality impact, while not in violation of the law, could be fundamentally worse than the impact of the dischargers EPA studied when promulgating a national limit.

EPA has been prompted by other comments to add a new provision (§ 125.31(e)(4)) which makes clear that specific receiving water quality is not a relevant factor in the fundamentally different factors variance context. To allow relaxation from technology-based limits because of case-by-case variations in receiving water quality would be grossly violative of the Act

and contrary to its fundamental principles. *Weyerhaeuser Company* v. *Costle*, 11 ERC 2149, 2170–73 (D.C. Cir. 1978); *Appalachian Power Company* v. *Train*, 545 F.2d 1351, 1360, 1378 (4th Cir. 1976); *In Re Louisiana-Pacific Corp.*, 10 ERC 1841 (Administrator's Decision 1977). Similarly, new § 125.31(f) makes clear that nothing in the variance provisions impairs rights of States and localities under section 510 of the Act. Thus, a State or local government need not grant a variance even if a discharger satisfies all of the requirements of Subpart D.

It should be stressed that only "fundamental" differences may qualify a discharger for a variance. The above-cited authorities and the Act's legislative history show that Congress intended for plants in a given industrial category to meet technology-based limitations which are as uniform as possible. EPA's national limits are therefore "presumptively applicable," *Appalachian, supra* at 1358, and the variance clause must assure that the "pin-hole safety valve envisioned in the Act and *duPont* does not become a yawning loophole." *Weyerhaeuser, supra* at 2169. Accordingly, a discharger should not expect to obtain a variance by merely showing certain differences between itself and the plants EPA studied since no two plants in the country are exactly alike. The discharger must instead show such a substantial difference with respect to one or more of the relevant statutory factors that either (i) the costs of complying would be wholly out of proportion to the costs EPA considered on a national basis or (ii) the non-water quality environmental impact (including energy requirements) would be fundamentally more adverse than the impacts EPA considered on a national basis.

Paragraph 125.31(e)(2) provides that a variance may not be granted on the basis that a technology which EPA relied upon in establishing a national limit will not achieve the limit at a particular discharger's plant. Rather, a variance must be based on a showing that the discharger's plant is fundamentally different from the plants EPA studied. If a discharger does not believe that EPA's national limit is supported by a technology which EPA identified in its rulemaking record, the discharger's legal recourse is to seek judicial review of the national limit under section 509(b)(1)(E) of the Act within 90 days after promulgation. Alternatively, if the discharger's arguments are based solely on grounds which arose after this 90-day period, the discharger's remedy is to petition EPA for an amendment to its national rules. (See Administrator's final decision in the matter of Martin Marietta Aluminum, Inc.'s request for variance approval, October 1977, at pp. 15–16.)

Finally, as in the proposal, this Subpart does not apply to national limits promulgated in 40 CFR Part 423 (steam electric generating point source category). Pursuant to an order of the U.S. Court of Appeals for the Fourth Circuit, EPA has already published a new BPT variance clause for that industry; 43 FR 44846, September 29, 1978. EPA plans to propose an appropriate BAT variance clause for this category at the same time it proposes new BAT limitations for steam electric plants in compliance with the 1977 Clean Water Act Amendments.

### Subpart H—Criteria for Determination of Alternative Thermal Effluent Limitations Section 316(a).

Subpart H (proposed Subpart I) is unchanged except for the addition of language regarding demonstrations of prior applicable harm discussed below. This language is now found in new § 125.72, *Early screening of applications for section 316(a) variances,* (proposed § 124.13); this section was moved into Part 125 because EPA believes it is more in the nature of a substantive, rather than a procedural requirement.

Commenters questioned why EPA did not discuss the use of "absence of prior appreciable harm" demonstrations for obtaining thermal variances under section 316. EPA considers the "absence of prior appreciable harm" demonstrations to be very important part of the section 316(a) process, and when warranted, encourages their use. EPA excluded reference to this type of demonstration because detailed guidance on how and when to conduct them will not be included in these regulations. However, for clarification, a reference to "absence of prior appreciable harm" has been added to this section.

The regulations have also been revised to provide that the specific forms of studies prescribed apply only to the initial grant of a section 316(a) variance. In many cases, neither the nature of the thermal discharge nor the aquatic population will have changed since a variance was initially granted. It would therefore be an unnecessary and costly burden on the Agency and dischargers alike to require a full section 316(a) demonstration for each renewal. Section 125.72 accordingly gives the Director the flexibility to require substantially less information in the case of renewal requests. This does not mean, however, that the Director may not require a full demonstration for a renewal in cases where he has reason to believe that circumstances have changed, that the initial variance may have been improperly granted, or that some adjustment in the terms of the initial variance may be warranted. Persons holding such a variance should, of course, be prepared to justify its continuation with studies based on actual operating experience, and a comment has been added to that effect.

One commenter suggested that the definitions of "representative important species" and "balanced indigenous community" should include only native species unless otherwise designated by the Director. Another commenter suggested the inclusion of all species. EPA has not changed this language.

Several commenters argued that applicants should not be required to analyze cumulative effects of thermal discharges together with other sources of impact upon the affected species as required by proposed § 125.47(a) (now § 125.72(a)). This issue was addressed in the Administrator's first *Seabrook* decision which concluded that analysis of cumulative effects is required.

Several commenters pointed out that the criteria in proposed § 125.47 (now § 125.72) are vague. The criteria have intentionally been written in a general manner because, as one commenter noted, factors in section 316(a) demonstrations are site-specific. Indeed, Agency experience in reviewing section 316(a) requests under the more detailed criteria of the former part 122 ("Thermal Discharges") has shown the inappropriateness of such criteria and has led to the more general criteria of present Part 125, Subpart H.

### Subpart J—Criteria for Extending Compliance Dates Under Section 301(i) of the Act.

Proposed Subpart K (now Subpart J) was reserved for the criteria for extending compliance dates under section 301(i) of the Act. On May 16, 1978, EPA published interim final regulations implementing section 301(i) of the Act (43 FR 21266). Section 301(i) authorizes the Administrator, or where appropriate, the State Director, to grant timely requests for permits extending the July 1, 1977 statutory treatment requirements to no later than July 1, 1983. These extensions are potentially available only to POTWs that require construction to meet 1977 treatment levels and to certain dischargers which planned, in good faith, to discharge into a presently unavailable POTW ("tie-

ins"). The purpose of the interim final regulation was to establish the criteria for granting section 301(i) extensions and the method for incorporating these extensions into permits issued under section 402 of the Act. A 60-day comment period was provided, and the Agency received 11 written comments.

The EPA response to significant comments, including the development of an *Interim National Municipal Policy and Strategy* (Notice of Availability published 43 FR 47774, October 17, 1978) is described below.

*The Enforcement Compliance Schedule Letter (ECSL) Policy*

In the preamble to the interim final regulation, EPA announced that no more municipal ECSLs or comparable State procedural mechanisms would be issued "[s]ince section 301(i) and the ECSL are different solutions to the same noncompliance problem" (43 FR 21267). The preamble further stated that ECSL holders should elect a remedy; they could either request a section 301(i) extension and thus ultimately give up the ECSL or not request a section 301(i) and thus retain the ECSL. EPA strongly encouraged all potentially eligible POTWs, whether or not they held an ECSL, to request section 301(i)(1) extensions. In response to this effort, over 9,500 POTWs have requested section 301(i)(1) extensions while slightly more than 600 POTWs elected to retain their ECSLs. Thus, almost every POTW in the Nation which needs construction to meet the 1977 treatment deadline has either taken advantage of section 301(i)(1) or chosen to retain its ECSL. One commenter expressed the belief that all ECSLs should remain in effect and that the prior granting of an ECSL indicated a finding of good faith and therefore should be dispositive of a section 301(i) request. EPA does not intend to change its policy on the effect of an extension request on an ECSL because to do so after the deadline for 301(i)(1) requests (June 26, 1978) would unfairly penalize the 600 ECSL holding POTWs which may have relied on this EPA policy in deciding not to request an extension. EPA also continues to believe that the prior granting of an ECSL is not dispositive of a 301(i) request and that Congress intended for each request to be considered independently in light of the statutory criteria and actions by the ECSL-holder subsequent to the issuance of the ECSL.

EPA is aware of possible situations under section 301(i)(2) where an extension request must be denied for reasons completely outside the control of the discharger (e.g. the POTW did not request or receive a section 301(i)(1) extension as required by the Act). In such a situation, the use of a section 309(a)(6) order to "tie-in" (or comparable State procedural mechanism) may be appropriate.

*Eligibility for a Section 301(i)(1) Extension*

Under interim final § 124.103, a POTW would be eligible for a section 301(i)(1) extension if, among other requirements, it required construction to achieve statutory treatment limitations. The term "construction" was defined in interim final § 124.102(a). One commenter suggested that the definition of "construction" should be the same as the definition in section 212 of the Act. EPA agrees with this comment, particularly since the granting of a section 301(i)(1) request and the awarding of Federal financial assistance are closely related. The definition of "construction" has been changed accordingly.

Under interim final § 124.103(a), a POTW that needed construction to achieve the statutory treatment limitations and that had begun "actual construction . . . before July 1, 1977, but construction could not physically be completed by July 1, 1977, despite all expeditious effort of the POTW" was eligible for a section 301(i)(1) extension. "Actual construction" was intended to mean that the POTW must have begun a continuous program of physical construction of the facility before July 1, 1977, as opposed to actions which have been abandoned or are so insignificant that they did not lead to completion of the facility. However, when the EPA Regional offices and NPDES States began to process section 301(i)(1) requests it became apparent that there was some confusion as to what "actual" construction meant since only the term "construction" was defined. Therefore, EPA has clarified this concept by replacing the term "actual construction" with the definition of the term "initiation of construction" to allow a precise definition which is consistent with the construction grants definition found at 40 CFR § 35.905. Thus, under § 125.93 a POTW would be eligible for a section 301(i)(1) extension if it: (1) needs construction to achieve the statutory treatment limitations; (2) before July 1, 1977, issued a notice to proceed under a construction contract for any segment of Step 3 project work (or executed a construction contract if notice to proceed was not necessary) and (3) made all expeditious efforts to complete construction.

Under interim final § 124.103(b) (now § 125.93(b)), a POTW that needed construction to achieve the statutory treatment limitations and did not complete construction because "[F]ederal financial assistance was not available, or was not available in time for construction required to achieve these limitations, and the POTW did not in any significant way contribute to this unavailability or delay", was eligible for a section 301(i)(1) extension. This criterion has not been changed. EPA recognizes that many POTWs, especially minor POTWs, meet this requirement but will not receive Federal funding in time (or at all) to complete construction by July 1, 1983. Since, by the terms of the Act, these POTWs cannot be granted a section 301(i)(1) extension, EPA has developed an *Interim National Municipal Policy and Strategy* which indicates that such POTWs should receive 309(a)(5)(A) Administrative Orders (or comparable State procedural mechanisms) which are also based on the Construction Grant process. These orders, like 301(i)(1) extensions, should not be written to extend the July 1, 1983 deadline.

*Section 301(i)(1) Compliance Schedules*

Many commenters expressed confusion as to when fixed date compliance schedules, as opposed to floating or ratchet compliance schedules, should be used. This confusion was as a result of the use of the phrases "when the availability of Federal funding is certain" and "when the availability of Federal funding is uncertain" to indicate what type of schedule should be used. EPA discourages the use of ratchet schedules or floating schedules because they decrease the ability of the public to participate in the permit process. Furthermore, by definition, if the availability of Federal funding is so uncertain that compliance with the July 1, 1983 deadline cannot reasonably be assured, then the POTW is not eligible for a section 301(i) extension. Thus the regulations now require fixed date compliance schedules in all instances. In the *Interim National Municipal Policy and Strategy*, EPA established the priority in which section 301(i)(1) extension requests should be considered. Generally, projects in the earliest stage of the Construction Grant process (i.e., Step 1) are to be processed last. One of the reasons for giving Step 1 projects lowest priority was that EPA recognized that uncertainties in the Step 1 planning process, such as the need to prepare an Environmental Impact Statement or to make changes after a

public hearing, make it difficult to project the amount of time it will take to complete the Step 1 planning process. However, if *after* acting on requests from POTWs in Steps 2 and 3, extensions are granted for POTWs in Step 1, fixed dates for the submission of a facility plan should be used, recognizing that up to a four month slippage without permit modification is allowable. Permits issued during or prior to Step 1 planning generally should be written to expire on the date set for submission of a facility plan. The reissued permit will then contain a fixed date compliance schedule derived from the facility plan. However, if the permitting authority is able to accurately establish dates certain beyond the Step 1 process, such dates may be included in the permit.

When developing fixed date compliance schedules based on the construction grant process, the permit issuing authority should assume that appropriation will be provided in accordance with the EPA Annual Operating Guidance. Use of this approach in developing permit compliance dates will be considered sufficient to meet the requirement that the permit assure that the July 1, 1983 deadline will be met. It should also be noted that while the regulations contemplate certification that funding will be available in time to complete construction by July 1, 1983 to be by whatever method the EPA Regional Office and the State agree on, the mere granting of a section 301(i)(1) extension by an NPDES State does not constitute certification.

**Subpart K—Criteria and Standards for Imposing Best Management Practice Under Section 304(e) of the Act.**

Proposed Subpart L (now Subpart K) was reserved for the criteria and standards for imposing best management practices under section 304(e) of the Act. On September 1, 1978, EPA published proposed regulations establishing these criteria and standards (43 FR 39282). Section 304(e) of the Act authorizes the Administrator to publish regulations to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage which may contribute significant amounts of toxic and hazardous pollutants to navigable waters. The purpose of Subpart K is to prevent discharges of toxic and hazardous substances from facilities which are subject to the NPDES. In *NRDC* v. *Costle* (Runoff Point Sources) the court recognized EPA's authority under section 402(a)(1) of the Act to include BMPs in permits where numeric effluent limitations are infeasible or where reasonably necessary to achieve effluent limitations and standards (see §122.15(g) (2) and (3) and preamble discussion to §122.15(g)). Subpart K, however, addresses EPA's authority to require BMPs under section 304(e) of the Act.

On September 1, 1978, EPA also proposed Spill Prevention Control and Countermeasure (SPCC) regulations under the authority of section 311(j)(1)(C) of the Act. Section 311(j)(1)(C) authorizes the issuance of regulations establishing procedures, methods and equipment to prevent discharges of oil and hazardous substances from vessels and from on-shore and off-shore facilities and to contain such discharges. The purpose of proposed 40 CFR Part 151 was to prevent discharges of hazardous substances from facilities subject to section 402 permitting requirements.

The approach used in both proposed regulations was similar to the one developed and used in EPA's oil pollution prevention regulation, 40 CFR Part 112. This was the concept of a plan developed by the owner or operator of a facility or by his/her engineer, in accordance with guidelines contained in the respective regulations. The proposal required that the plans be certified by a registered professional engineer and subsequently implemented by the owner or operator.

The requirements of the two proposed regulations (40 CFR Parts 125 and 151) were coordinated and the proposals stated that compliance by a facility with the provisions of the SPCC plan requirements set out in 40 CFR Part 151 would be established as a minimum level of control for the BMP plan required by 40 CFR Part 125. The purpose of publishing the two regulations concurrently was to allow the owner or operator of a permitted facility to develop BMP and SPCC plans concurrently and thereby avoid duplication of environmental controls. The proposal stated that SPCC plans could be incorporated into BMP Plans by reference.

A thirty-day comment period was provided which was extended twenty days (43 FR 47213, October 31, 1978). The Agency received 75 comments and EPA's response to the significant comments is described below.

Several comments were received suggesting that BMP Plans and SPCC Plans are duplicative and should be developed together. Other comments requested a clarification of the relationship between the two. Finally, some comments argued that since BMPs and SPCC Plans are authorized by different sections of the Act, they are therefore designed for different purposes and should not be linked. In response to the first comment, EPA wishes to point out that BMP Programs and SPCC Plans are being developed together. This first step in this development is Subpart K, i.e., BMPs which involve minor new construction or modifications to existing facilities. The second step will be SPCC Plans (and perhaps another BMP regulation) which will emphasize secondary containment to control spills and may require major construction for drainage control, sewering and diking.

EPA believes that a requirement for BMP programs is a necessary step at this time, for a number of reasons. Many industrial permits were issued during 1974 and 1975 and will be due for renewal before the SPCC requirements under section 311 become effective. Since the timing for preparation of SPCC plans by NPDES-permitted facilities will be tied to permit reissuance, many facilities would be subject to no spill prevention controls at all until 1984 or 1985. The development of a BMP program by such facilities will focus attention on the potential for spills and other unplanned discharges and help to prevent such occurrences until the time SPCC requirements become effective. BMP programs will be compatible with later requirements for SPCC plans, and steps taken in implementing a BMP program will satisfy some of the SPCC requirements. Additionally, EPA believes that prevention of unplanned releases of toxic materials requires actions by facilities not yet subject to SPCC requirements, and that the BMP program is an effective and relatively inexpensive way to achieve such prevention.

EPA also agrees with some commenters that, while both BMPs and SPCC Plans have many common features, their emphasis is different. Facilities subject to the NPDES Program normally have continuous discharges of wastewater and the capability to treat that wastewater. SPCC Plans, on the other hand, focus on classic spill events and may require containment. Thus, there is some overlap between BMPs and SPCC Plans (BMPs are normally a subpart of SPCC Plans) and therefore a need exists for a regulatory link. It should be noted that BMPs are broader than SPCC Plans in one sense because BMPs control both section 307 and 311 pollutants whereas SPCC Plans control only section 311 pollutants.

Many commenters argued that the economic impact of the proposed

regulations would be excessive and that the benefits to the environment would not justify the expense of employing the BMPs contemplated by the regulation. Although EPA explicitly requested information in the preamble to the proposed regulation (43 FR 39282) concerning the costs of BMPs and preparation of BMP plans for particular industries, few commenters directly addressed costs. It appears that the major categories of expense in the proposal were for SPCC related requirements. Because of this economic impact, EPA has revised today's regulations to make inclusion of SPCC plans in BMP programs discretionary rather than mandatory as was proposed. (See § 125.104(b)(4)(i).) Thus, Subpart K emphasizes BMPs of a procedural nature (especially preventive maintenance and housekeeping) and BMPs requiring only minor construction.

Based on a recent EPA survey of representative plants in the chemical industry, it appears that many of these type of BMPs are currently in use by facilities. Good housekeeping or preventive maintenance procedures, material recovery programs, safety procedures, training programs, etc. are common and thus the costs of complying with Subpart K will not be great. Facilities are encouraged, nevertheless, to begin planning for BMP-related major construction (drainage control, waste stream segregation, and secondary containment) to coincide with construction related to the installation of best available technology (BAT) and of the implementation of (SPCC) plans. BMP regulations requiring major construction may be published in the future.

Under authority of section 402(a)(1) of the Act, permitting authorities may impose BMPs on a case-by-case basis using best engineering judgment. These case-specific BMPs may be more costly than those contemplated by Subpart K which requires only procedural BMPs or minor construction. Guidance to permitting authorities will emphasize procedural BMPs and will encourage equivalency for potentially costly BMPs, such as secondary containment. Where permitting authorities have knowledge of a specific facility or receive information through the permit application indicating the opportunity for discharges of toxic or hazardous pollutants which could be prevented by a BMP, the permitting authority may impose a BMP based on best engineering judgment. Such BMPs, which may involve construction, are expected to be limited to facilities with spill histories or other indications of an inadequate program to control discharges from ancillary industrial activities.

Several commenters argued that dictating manufacturing process changes or operational procedures and activities went beyond the intent of Congress. EPA does not intend to use BMPs to dictate how plants are operated or to otherwise infringe on plant management's prerogatives. However, section 304(e) does give EPA the authority to prescribe certain "in-plant" procedures or practices which would be useful to prevent the discharge of toxic or hazardous pollutants where traditional effluent limitations guidelines are impractical or ineffective.

To further explain EPA's intent, changes have been made to proposed § 125.62 and § 125.64(b)(4)(iii), now § 125.102 and § 125.104(iii), to clearly distinguish between ancillary manufacturing operations (sources of pollutants) and BMPs (methods to prevent or minimize pollution). For example, preventive maintenance and housekeeping are BMPs, not ancillary operations. Material storage and loading/unloading operations are ancillary manufacturing operations, not BMPs.

To allow due process and public notice of BMP programs, permittees are now required to submit a description of their program with their NPDES permit application, (§ 125.104(c)). Some commenters thought one year for the implementation of BMP plans, proposed § 125.64(c), was too short. EPA feels that the one year after permit issuance is realistic and reasonable, particularly for the BMPs of a procedural nature or minor construction required by this Subpart. However, a discharger could be given more than one year under special circumstances such as coordinating a BMP plan with an SPCC plan required under 40 CFR Part 151.

Many commenters suggested that the term "significant amount" should be defined or that a minimum amount of a particular chemical should be specified to require the preparation of a BMP plan. EPA has not defined this term but wishes to clarify its meaning. In the case of section 311 pollutants EPA has proposed reportable quantities of hazardous substances (44 FR 10271, Feb 16, 1979) and considers these quantities potentially significant for the purpose of this Subpart. For section 307 pollutants, the fact that a chemical is on the section 307 toxic pollutant list indicates potentially toxic effects of its discharge. As guidance to facilities developing BMP programs, two examples are given to demonstrate the definition of "significant amount" in terms of the BMPs applicable to a particular chemical:

1. A facility uses laboratory quantities of toxic chemical X in an analytical chemistry laboratory adjacent to its manufacturing facility. Chemical X is used for no other purpose at the facility. No more than five pounds of the chemical are on hand at any given time. An appropriate BMP could be to label all containers of chemical X with instructions such as "Do not dispose of this material in laboratory sinks. Refer to Laboratory Procedures Manual for Disposal Instructions." The Laboratory Procedures Manual might further provide that chemical X and other compatible chemicals be disposed of in an appropriately labelled 55 gallon drum to be periodically picked up and treated by a responsible hazardous waste contractor in accordance with RCRA regulations.

2. A facility uses thousands of gallons daily of a hazardous chemical Y (a section 311 Category "A" pollutant) as a raw material in a batch chemical manufacturing process and is located next to a small stream. Chemical Y is stored outside in a single 10,000 gallon tank and is periodically pumped to the reactor vessel. An appropriate BMP would be to provide secondary containment around the storage tank in the form of a dike to contain the maximum volume of chemical Y stored in the tank plus a reasonable allowance for rainfall. In the alternate, a facility might choose to use a combination of measures instead of secondary containment to attempt to achieve equivalency to secondary containment. For example, a liquid level alarm, frequent non-destructive testing and daily visual inspections might be employed rather than constructing a dike around the storage tank. However, this latter approach may not satisfy proposed SPCC requirements which require the former approach, i.e., secondary containment wherever reasonable probability of a discharge to navigable waters exists. Thus, provision of secondary containment would satisfy both BMP and proposed SPCC requirements simultaneously.

Numerous commenters stated that the proposed regulations went beyond the intent of Congress because the development of BMPs is discretionary and can ony be on the basis of point source categories supplemental to effluent guidelines. EPA disagrees and believes that BMP programs and case-by-case determination of BMPs are appropriate based on the legislative history to section 304(e) (see *CWA Legis. Hist.* at 453 which specifically discusses case-by-case determinations of BMPs). BMPs supplemental to effluent limitations guidelines have not yet been promulgated by EPA. However, the potential for confusion and duplication of effort by the permittee between BMPs and SPCC plans has led us to delete the requirement for a BMP plan in favor of a BMP program. The BMP program approach provides a self-regulatory,

flexible mechanism to control toxic and hazardous pollutant discharges from ancillary sources and will allow permittees to develop BMPs tailored to their particular circumstances with attendant cost savings.

Many comments were received concerning the relationship of BMPs to the requirements of the Resource Conservation and Recovery Act (RCRA), arguing that RCRA requirements should not be imposed by the Clean Water Act. EPA disagrees and wishes to point out that section 304(e) specifically includes the phrase "sludge or waste disposal" as one of four general activities subject to BMPs. Thus § 125.104(b)(4)(ii) has not been changed and continues to require management practices developed by companies to comply with RCRA to simultaneously satisfy the BMP requirements of the Clean Water Act by expressly incorporating the practices into the BMP program.

Many commenters felt that the requirement for a professional engineer (PE) to certify the BMP plan was unnecessary and should be eliminated or made optional. Since Subpart K no longer requires BMP plans, PE certification is no longer required. However, EPA continues to believe that PE certification would assure a *minimum* level of quality in both BMPs and SPCC plans. Since today's regulations are the first step in a two step process, and the second step (SPCC regulations 40 CFR Part 151) may require PE certification of SPCC plans, EPA encourages facilities to develop their programs in accordance with sound engineering practices. These facilities would then have BMP-related procedures and construction which could satisfy, in part, future SPCC requirements.

*Economic Impact of Subpart K*

Since Subpart K now requires only BMPs of a procedural nature or those requiring minor construction, the costs of compliance with these regulations should be minimal. Permittees are encouraged to use innovative, inexpensive techniques to achieve the basic goal of preventing the discharge of toxic or hazardous pollutants from ancillary industrial activities to surface waters. Because BMP requirements will vary among facilities, guidance will be provided to the permit writers on what requirements are sufficient. This guidance will reflect the conclusion of a BMP cost analysis which is being undertaken by the Agency. The guidance will consider reasonableness of cost. Most facilities have many of these generic BMPs in place and Subpart K only requires documentation of the existing practices or, in some cases, upgrading and documentation of the BMP program. Although BMPs requiring major construction (e.g., grading, paving, sewering, waste stream segregation, covering, and secondary containment) may be included in the BMP program description, the implementation of these BMPs is not mandated by these regulations. Therefore, EPA has determined that Subpart K does not constitute a major regulation requiring the preparation of an economic impact statement under Excecutive Order 12044.

Because there is much flexibility in how the individual facility complies with BMP procedural requirements, there is also flexibility in compliance costs. The cost of developing and implementing BMP procedures is estimated to be within the range of $10,000 to $30,000 per facility for the costs of a materials inventory, some engineering modifications, training, maintenance, housekeeping, and some minor construction for items such as the installation of liquid level alarms. To develop these costs the assumption was made that 50% of the BMP procedural requirements would already be in place in order to meet normal safety, fire, and other occupational or operational standards. Clearly, a facility with minor problems will require a less elaborate program.

Because the requirements may be less flexible under the SPCC program for which these BMP requirements are the first stage and we have so little cost data now on the BMP procedures because of their flexibility, further cost estimates for BMPs will be acquired when we prepare a detailed analysis of the SPCC cost requirements. These estimates will be necessary for the Agency to adequately assess the cost and usefulness of specific aspects of the SPCC program.

Based on existing predictions of NPDES permit issuance, industrial facilities will be required to develop and implement BMP programs on the following schedule:

*Number of Permits*

| | |
|---|---|
| FY 1979 | 2,600 |
| FY 1980 | 3,000 |
| FY 1981 | 1,700 |
| FY 1982 | 1,000 |

Using an average cost of $20,000 per facility, the total costs of BMPs, thru FY 1982 are expected to be no greater than the following:

| | |
|---|---|
| FY 1979 | $52,000,000 |
| FY 1980 | $60,000,000 |
| FY 1981 | $34,000,000 |
| FY 1982 | $20,000,000 |

This does not include the cost of BMPs established under authority of section 402(a)(1) using best engineering judgment.

The Agency may propose a new form of BMP guidelines in the future which will describe BMPs which are broadly applicable to industrial facilities and relatively independent of the chemical under consideration. In addition, these BMP guidelines would address more specific or advanced BMPs for certain chemicals or ancillary industrial activities and would include an economic impact analysis. Major construction would probably be required to comply with these *future* BMPs and likely will be required to comply with the SPCC regulations.

*VI. The Relationship of the NPDES Program to the Regulation of Hazardous Substances Under Section 311 of the Act*

On November 2, 1978, Congress amended section 311 of the Act (Pub. L. 95–576). Because this Congressional action was taken after the August 21, 1978 proposal, EPA feels a brief discussion of the relationship of the NPDES program to section 311 is warranted.

Section 311 of the Act regulates discharges of oil and hazardous substances and contains reporting requirements, penalties and other requirements. Until the 1978 amendments, the relationship between the requirements of section 311 and those of section 402 has been unclear. In particular, it was unclear whether, and to what extent, discharges from facilities with NPDES permits were subject to the provisions of section 311.

On November 2, 1978, Congress amended section 311 and set forth three types of discharges of hazardous substances which will be subject to sections 402 and 309 of the Clean Water Act and excluded from section 311 liability. The three cases excluded are (1) discharges in compliance with a permit under section 402 of the Act, (2) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Act, and subject to a condition in such permit, and (3) continous or anticipated intermittent discharges from a point source, identified in a permit or a permit application under section 402 of the Act, which are caused by events occurring within the scope of relevant operating or treatment systems. These excluded discharges are exempted from the

reporting requirements, civil penalties and clean-up cost liabilities under section 311 and are instead subject to sections 402 and 309 of the Act.

On February 16, 1979, EPA proposed regulations addressing the 1978 amendments to section 311 (44 FR 10271, 40 CFR § 117.12). The proposed regulations include detailed criteria for exclusions from section 311. The preamble to that proposal contained an extensive discussion of the criteria for section 311 exemptions. Interested persons are advised to review that proposal. When the section 311 regulations are published in final form, they will be incorporated into NPDES regulations as appropriate.

The Agency is presently developing revised application requirements which will be announced in the near future in the form of proposed regulations and a draft revised NPDES permit application form (reserved § 122.14(a)). The new requirements will afford applicants the opportunity to identify discharges and spills of hazardous substances. Where adequate treatment equipment or management practices are available to control such events, permits will contain appropriate requirements reflecting such control. Coverage of these discharges or spills by permits will result in exemption from the requirements of section 311.

*VII. Conforming Amendments to the General Pretreatment Regulations 40 CFR Part 403.*

This rulemaking contains a series of technical amendments to the General Pretreatment Regulations for New and Existing Sources of Pollution (40 CFR Part 403, 43 FR 27736–27762, June 26, 1978). These amendments will conform the pretreatment regulations to both the final NPDES regulations and the Public Participation Regulations (40 CFR Part 25, 44 FR 10286–10297 February 16, 1979). Since the provisions in the pretreatment regulations were based on the proposed or draft versions of both the regulations, changes are necessary. The majority of these changes are in the nature of cross-reference corrections in 40 CFR Part 403.

The most significant revision is that the process for EPA review and approval of State pretreatment programs is now governed by 40 CFR § 123.61 rather than 40 CFR § 403.11. This was done to assure that EPA has a uniform process for approving revisions to State NPDES programs. The time deadlines for applying for State pretreatment program approval and the contents of the application will continue to be governed by § 403.10. It is anticipated that further amendments to the pretreatment regulations will be made in the near future.

**Note.**—The Enivronmental Protection Agency has determined that this document does not constitute a major regulation requiring preparation of an economic impact statement under Executive Order 12044. In accordance with Executive Order 12044, EPA is committed to evaluating significant new regulations within five years of implementation. The evaluation plan for this regulation was not included in the August 21, 1978 proposal since the Agency policy was established several months subsequent to publication of the proposed regulation. Since an evaluation plan was not included in the proposed regulations, an evaluation plan is not included in this final rule. However, these NPDES regulations will be incorporated into the EPA consolidated permit regulations schedule to be proposed sometime in June 1979. A proposed evaluation plan for these NPDES regulations will be incorporated into the overall evaluation plan for the consolidated permit regulations. EPA anticipates the evaluation plan will include assessments of: reporting requirements; elimination of duplicative requirements for permit applicants and NPDES States; new permit procedures designed to reduce unnecessary delay and the effectiveness of the reorganization of the regulations for greater clarity.

**Authority.**—These regulations are issued under authority of the Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 *et seq.*

Date: May 22, 1979

**Douglas M. Costle,**

*Administrator.*

## PART 6—PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS

1. 40 CFR Part 6, Subpart I, is amended by deleting §§ 6.906, 6.909 6.916 (b) and (c) and 6.918.

## PART 115—REQUIREMENTS FOR APPROVAL OF AQUACULTURE PROJECTS [DELETED]

2. 40 CFR Part 115 is deleted.

## PART 121—STATE CERTIFICATION OF ACTIVITIES REQUIRING A FEDERAL LICENSE OR PERMIT

3. 40 CFR Part 121 is redesignated from 40 CFR Part 123.

4. Part 122 is revised to read as follows:

## PART 122—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

### Subpart A—General

Sec.

122.1 Purpose and scope.
122.2 Law authorizing NPDES permits.
122.3 Definitions.
122.4 Exclusions.
122.5 Signatories.

### Subpart B—NPDES Permit Application and Issuance

122.10 Application for a permit.
122.11 Permit issuance; effect of permit.
122.12 Duration of permits and continuation of expiring permits; Transferability of permits.
122.13 Prohibitions.
122.14 Conditions applicable to all permits.
122.15 Applicable limitations, standards, prohibitions, and conditions.
122.16 Calculation and specification of effluent limitations and standards.
122.17 Schedules of compliance.

### Subpart C—Permit Compliance

122.20 Monitoring.
122.21 Recording of monitoring results.
122.22 Reporting of monitoring results and compliance by permittees.
122.23 Noncompliance reporting.

### Subpart D—Permit Modification, Revocation and Reissuance, and Termination

122.30 General.
122.31 Modification, revocation and reissuance, and termination.

### Subpart E—Special NPDES Programs

122.40 General.
122.41 Disposal of pollutants into wells, into publicly owned treatment works or by land application.
122.42 Concentrated animal feeding operations.
122.43 Concentrated aquatic animal production facilities.
122.44 Aquaculture projects.
122.45 Separate storm sewers.
122.46 Silvicultural activities.
122.47 New sources and new dischargers.
122.48 General permit program.
122.49 Special considerations under Federal law.

### Subpart F—Miscellaneous

122.60 Delegation of authority.
Appendix A.—Point Source Categories and Permit Expiration Dates.

**Authority.**—Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq; Administrative Procedure Act, 5 U.S.C. 551 et seq.

### Subpart A—General

#### § 122.1 Purpose and scope.

(a) The regulations in this Part define the National Pollutant Discharge Elimination System (NPDES) program including permit programs under sections 402, 318 and 405 of the Act. They apply to the program as administered by EPA and, to the extent incorporated by reference in Part 123, by approved NPDES States.

(b) The regulations in Parts 123, 124, and 125 also apply to the NPDES program as follows:

(1) Part 123 describes the requirements for State participation in

the NPDES permit program and in the permit program established under section 404 of the Act ("section 404 program").

(2) Part 124 describes certain permitting procedures for the NPDES program; these procedures apply in their entirety to the program as it is administered by EPA and, to the extent incorporated by reference in Part 123, by approved NPDES States.

(3) Part 125 describes some of the criteria and standards for making certain determinations in the NPDES program; these criteria and standards apply to the program as administered by EPA and, to the extent incorporated by reference in Part 123, by approved NPDES States.

(c) Section 402 of the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act), (Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576) establishes the NPDES program. The NPDES program also includes permit program requirements under sections 318 and 405 of the Act. This program regulates the discharge of pollutants from point sources and related activities into the waters of the United States. All such discharges or activities are unlawful absent an NPDES permit. After a permit is obtained, a discharge not in compliance with all permit terms and conditions is unlawful.

(d) NPDES permits are issued by the State Director, or by the EPA Regional Administrator where there is no approved State program or where the permit is for discharges resulting from activities on Indian lands over which the States has no jurisdiction.

[*Comment:* Throughout this Part, the Regional Administrator is designated as the EPA permit issuing authority where no State NPDES program is approved. However, reference to the "Regional Administrator" for purposes of permit issuance should be read to include the Enforcement Division Director. Similarly, the term "State Director" includes the delegated representative of the State Director.]

### § 122.2 Law authorizing NPDES permits.

(a) Section 301(a) of the Act provides that "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful."

(b) Section 402(a)(1) of the Act provides in part that "the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, . . . upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of [the] Act, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of [the] Act."

(c) Section 318(a) of the Act provides that "The Administrator is authorized, after public hearings, to permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision pursuant to section 402 of this Act."

(d) Section 405 of the Act provides, in part, that "where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 212 of this Act (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under section 402 of the Act."

(e) Sections 402(b), 318 (b) and (c), and 405(c) of the Act authorize EPA approval of State permit programs for discharges form point sources, discharges to aquaculture projects, and disposal of sewage sludge.

(f) Section 404 of the Act authorizes EPA approval of State permit programs for the discharge of dredge or fill material.

(g) Section 304(i) of the Act provides that the Administrator shall promulgate guidelines establishing uniform application forms and other minimum requirements for the acquisition of information from discharges in approved States and establishing minimum procedural and other elements of approved State NPDES programs.

(h) Section 501(a) of the Act provides that "The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act."

(i) Section 101(e) of the Act provides that "Public participation in the development, revision, and enforcement of any regulations, standard, effluent limitations, plan, or program established by the Administrator or any State under this Act shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes." Public participation requirements set forth in these regulations carry out the purposes of 40 CFR 25 and supersede the requirments of that Part as they apply to actions controlled by Parts 121–125 of these regulations.

### § 122.3 Definitions.

The following definitions apply to this Part and to Parts 123, 124 and 125:

[*Comment:* Terms used in this Part and in Parts 123, 124 and 125 which are defined in the Act, and are not defined here shall have the meaning provided in the Act.]

(a) "Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576, 33 U.S.C. 1251 *et seq.*

(b) "Administrator" means the Administrator of the United States Environmental Protection Agency.

(c) "Application" means:

(1) The EPA standard national forms for applying for an NPDES permit, including any subsequent additions, revisions or modifications, or

(2) Substantially similar forms approved by EPA for use in approved States at the time of a program approval under Part 123, including any approved subsequent additions, revisions or modifications.

[*Comment:* EPA is presently developing a new application form. The essential elements of this new application form will be required to be used by the States.]

(d) "Applicable standards and limitations" means all State, interstate and Federal standards and limitations to which a discharge or related activity is subject under the Act, including, but not limited to, effluent limitations, water quality standards, standards of performance, toxic effluent standards and prohibitions, best management practices, and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 218, 403 and 405 of the Act.

(e) "Approved State program" means a State or interstate permit program which meets the requirements of section 402(b) of the act, and which has been submitted to and approved by EPA under §123.51 and section 402(c) of the Act. Approved State programs must include authority to regulate discharges specified in sections 318 and 405 of the Act through the NPDES program.

(f) "Best management practices" "BMPs" includes treatment requirements, operating and maintenance procedures, schedules of activities, prohibitions of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage. BMPs may be imposed

in addition to or in the absence of other applicable standards and limitations.

(g) "Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

(h) "Direct discharge" means the discharge of a pollutant or the discharge of pollutants.

(i) "Director" means the "Regional Administrator" or the "State Director," as appropriate.

*[Comment:* Where there is no approved State program, the term "Director" refers to the Regional Administrator. Where there is an approved State program, the term "Director" normally refers to the State Director. In some circumstances, however, EPA retains authority to take certain actions even where there is an approved State program. E.g., where EPA issued a permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval, see §123.1(d). In such cases, the term"Director" means the Regional Administrator and not the State Director.]

(j) "Discharge" when used without qualification includes a discharge of a pollutant and a discharge of pollutants.

(k) "Discharge of a pollutant" and "discharge of pollutants" each means:

(1) Any addition of any pollutant or combination of pollutants to navigable waters from any point source, or

(2) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft when being used as a means of transportation.

This definition includes discharge into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality or other party which do not lead to treatment systems; and discharges through pipes, sewers, or other conveyances, leading into treatment systems owned in whole or in part by a third party other than a State or a municipality.

(l) "Discharge Monitoring Report ("DMR") means the EPA uniform national form, including any subsequent additions, revisions or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by approved States as well as by EPA.

*[Comment:* EPA will supply DMRs to any approved State upon request. The EPA uniform national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's]

(m) "Effluent limitation" means any restriction imposed by the Director on quantities, rates, and concentrations of pollutants which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean.

(n) "Enforcement Division Director" means the Director of the Enforcement Division within the appropriate Regional Office of the Environmental Protection Agency.

(o) "Environmental Protection Agency" ("EPA") means the United States Environmental protection Agency.

(p) "Indirect discharger" means a non-municipal, non-domestic discharger introducing pollutants to a publicly owned treatment works, which introduction does not constitute a "discharge of pollutants."

(q) "Interstate agency" means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(r) "Municipality" means a city, town, borough, county, parish, district, association or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act.

(s) "NPDES" ("National Pollutant Discharge Elimination System") means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits pursuant to sections 402, 318, and 405 of the Act. The term includes any State or interstate program which has been approved by the Administrator.

(t) "Navigable waters" means "waters of the United States, including the territorial seas." This term includes:

(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) Interstate waters, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats and wetlands, the use, degradation or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;

(4) All inpoundments of waters otherwise defined as navigable waters under this paragraph;

(5) Tributaries of waters identified in paragraphs (1)–(4) of this section, including adjacent wetlands; and

(6) Wetlands adjacent to waters identified in paragaphs (1)–(5) of this section ("Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally included playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds); *provided that* waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

*[Comment:]* For purposes of clarity the term "waters of the United States" is primarily used throughout the regulations rather than "navigable waters"]

(u) "New discharger" means any building, struture, facility or installation: (1) which on October 18, 1972, has never discharged pollutants; (2) which has never received a finally effective NPDES permit; (3) from which there is or may be a new or additional discharge of pollutants; and (4) which does not fall within the definition of "new source."

(v) "New source" means any building, structure, facility or installation from which there is or may be a discharge of pollutants the contruction of which commences:

(1) After promulgation of standards of performance under section 306 of the Act which are applicable to such source; or

(2) After proposal of standards of performance under section 306 which are applicable to such source, but only if the standards are promulgated within 120 days of their proposal.

[*Comment*: See § 122.47 for the criteria and standards to be used in determining whether a source has commenced construction within the meaning of this definition, for the types of construction activities which result in new sources or new dischargers, and for the effect of a new source determination.]

(w) "Permit" means any permit issued by EPA under the authority of section 402 of the Act or by an approved State under the authority of State law, controlling the discharge of pollutants into the waters of the United States.

[*Comment*: Approved States are not required to use the EPA standard permit form. However, State permit forms are reviewed and approved at the time of NPDES program approval. See § 123.3(a)(5).]

(x) "Person" means an individual, corporation, partnership, association, Federal agency, State, municipality, commission, or political subdivision of a State or any interstate body.

(y) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(z) "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(1) Sewage from vessels or

(2) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation or ground or surface water resources.

[*Comment*: The legislative history of the Act reflects that "radioactive materials" as included within the definition of "pollutant" in section 502 of the Act means only radioactive materials which are not encompassed in the definition of source, by-product, or special nuclear materials as defined by the Atomic Energy Act of 1954, as amended, and regulated under the Atomic Energy Act. Examples of radioactive materials not covered by the Atomic Energy Act and, therefore, included within the term "pollutant" are radium and accelerator produced isotopes. See *Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976).]

(aa) "Process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(bb) "Publicly owned treatment works" ("POTW") means a treatment works as defined in section 212 of the Act, which is owned by a State or municipality, excluding any sewers or other conveyances not leading to a facility providing treatment.

(cc) "Regional Administrator" means the Regional Administrator of the appropriate Regional Office of the Enviromental Protection Agency or the delegated representative of the Regional Administrator.

(dd) "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with applicable standards or limitations or other permit requirements. Unless otherwise provided in these regulations, each schedule shall culminate in a specific requirement to achieve expeditious final compliance with all applicable standards and limitations.

(ee) "Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

(ff) "Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under section 312 of the Act, except that with respect to commercial vessels on the Great Lakes this term includes graywater. For the purposes of this definition, "graywater" means galley, bath, and shower water.

(gg) "Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a publicly owned treatment works. "Sewage" as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

(hh) "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

(ii) "State Director" means the chief administrative officer of a State water pollution control agency or interstate agency approved by EPA to administer the NPDES program, or the delegated representative of the State Director. If responsibility for water pollution control and enforcement is divided within a State agency or among two or more State or interstate agencies, "State Director" means the administrative officer authorized to perform the particular procedure or function to which reference is made.

(jj) "Variance" means any mechanism or provision under sections 301 or 316 of the Act and Part 125, or in the applicable effluent limitation guidelines which allow modification to or waivers of the effluent limitation requirements of the Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors and sections 301(c), 301(g), 301(h), and 316(a) of the Act, where appropriate.

(kk) "Waters of the United States" means "navigable waters."

**§ 122.4 Exclusions.**

(a) The following discharges do not require an NPDES permit:

(1) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when a vessel is being used as an energy or mining facility, a storage facility, or a seafood processing facility, or is secured to the bed of the ocean, contiguous zone, or waters of the United States for the purpose of mineral or oil exploration or development;

(2) Discharges of dredged or fill material into waters of the United States and regulated under section 404 of the Act.

(3) The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers.

[*Comment:* This exclusion applies only to the actual introduction of pollutants into publicly owned treatment works. Plans or agreement to switch to this method of disposal in the future do not relieve dischargers of the obligation to apply for and receive permits until all discharges of pollutants to waters of the United States are actually eliminated. All applicable pretreatment standards promulgated under section 307(b) of the Act must also be complied with, and may be included in the permit to the publicly owned treatment works. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other

conveyances owned by a State, municipality, or other party not leading to treatment works. See § 122.3(k)].

(4) Any introduction of pollutants from agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to:

(i) Discharges from concentrated animal feeding operations as defined in § 122.42;

(ii) Discharges from concentrated aquatic animal production facilities as defined in § 122.43;

(iii) Discharges to aquaculture projects as defined in § 122.44; and

(iv) Discharges from silvicultural point sources as defined in § 122.46.

(b) The exemption of a discharge from NPDES requirements in paragraph (a) of this section does not preclude State regulation of the exempted discharge under State authority, in accordance with section 510 of the Act.

**§ 122.5 Signatories.**

(a) All permit applications shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a muncipality, State, Federal, or other public facility, by either a principal executive officer or ranking elected official.

(b) All other reports or requests for information required by the permit issuing authority shall be signed by a person designated in paragraph (a) or a duly authorized representative of such person, if:

(1) The representative so authorized is responsible for the overall operation of the facility from which the discharge originates, e.g., a plant manager, superintendent or person of equivalent responsibity;

(2) The authorization is made in writing by the person designated under paragraph (a); and

(3) The written authorization is submitted to the Director.

(c) Any changes in the written authorization submitted to the permitting authority under paragraph (b) which occur after the issuance of a permit shall be reported to the permitting authority by submitting a copy of a new written authorization which meets the requirements of paragraph (b) (1) and (2).

(d) Any person signing any document under paragraph (a) or (b) shall make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document; and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

[*Comment:* The permit application will be revised to incorporate this statement. Where a permit program document does not contain the statement, the certification must accompany the appropriate document.]

(e) This section is applicable to approved States (see § 123.12). States may adopt language which is equivalent to, but not identical to, the certification statement in paragraph (d), if such equivalent language is approved by the Regional Administrator.

## Subpart B—NPDES Permit Application and Issuance

**§ 122.10 Application for a permit.**

(a) Any person who discharges or proposes to discharge pollutants, except persons covered by general permits under § 122.48 or excluded under § 122.4, shall complete, sign, and submit an application (which includes a BMP program if necessary under § 125.102) to the Director in accordance with Part 124, Subpart B.

(b) Persons currently discharging who have:

(1) Existing permits shall submit a new application under paragraph (c) of this section where facility expansions, production increases, or process modifications will:

(i) Result in new or substantially increased discharges of pollutants or a change in the nature of the discharge of pollutants, or

(ii) Violate the terms and conditions of the existing permit.

(2) Expiring permits shall submit new applications at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director.

(c) A person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Regional Administrator.

[*Comment:* Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180 day requirement to avoid delay. In addition, information required by § 124.12(b)(1) must be submitted before on-site construction, which normally will commence long before the permit application is required.]

**§ 122.11 Permit issuance; effect of permit.**

(a) The receipt of a complete application by the Director initiates the permit issuance process described in Part 124.

(b) Following the permit issuance process the Director may issue or deny a finally effective permit. Where EPA is the permitting authority, EPA action shall not be final for the purpose of judicial review under section 509(b) of the Act until this issuance or denial has taken place. (See § 124.61).

(c) Compliance with a permit during its term constitutes compliance, for purposes of sections 309 and 505, with applicable standards and limitations of the Act, except for any standard imposed under section 307 for a toxic pollutant injurious to human health. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as described in § 122.31.

(d) The issuance of a permit does not:

(1) Convey any property rights of any sort, or any exclusive privileges;

(2) Authorize any injury to private property or invasion of other private rights, or any infringement of Federal, State, or local laws or regulations; or

(3) Preempt any duty to obtain State or local assent required by law for the discharge.

**§ 122.12 Duration of permits and continuation of expiring permits; transferability of permits.**

(a) *Duration of Permits.* All permits shall be issued for fixed terms not to exceed five years. Permits of less than five years duration may be issued in appropriate circumstances (see paragraph (c)). Permits may be modified, revoked and reissued, or terminated as specified in Subpart D. Except for the continuation provisions of paragraph (b) for expiring permits, the term of a permit shall not be extended beyond five years from its original date of effectiveness by modification, extension or other means.

(b) *Continuation of expiring permits.* (1) Where EPA is the permit issuing authority, the terms and conditions of an expired permit are automatically continued under 5 U.S.C. § 558(c) pending issuance of a new permit if:

(i) The permittee has submitted a timely and sufficient application for a new permit under § 122.10(a); and

(ii) The Regional Administrator is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit

(e.g., where it is impracticable due to time and/or resource constraints).

(2) Permits continued under paragraph (b)(1) remain fully effective and enforceable against the discharger.

(3) Where the permittee is not in compliance with the terms and conditions of the expiring permit:

(i) The permit may be continued under this section pending a final determination by the Regional Administrator on the application for a new permit and enforcement action may be taken based upon the continued permit; or

(ii) The Regional Administrator may make a determination to deny the application for a new permit in accordance with the procedures specified in Part 124. The discharger would then be subject to enforcement action for discharging without a permit.

(4) States authorized to administer the NPDES may continue permits in a similar manner if so authorized by State law. However, a permit is not continued under Federal law where EPA originally issued the permit, but the State is the permitting authority at the time the permit expired. In such case, the discharger is discharging without a permit, from the time the EPA-issued permit expires to the time that the State-issued permit is effective.

(c) No permit issued to a discharger within an industrial category listed in Appendix A of this Part, prior to the applicable permit expiration date listed in Appendix A, may be issued to expire after that date, unless:

(1) The permit incorporates effluent limitations and standards applicable to the discharger which are promulgated or approved under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Act; or

[*Comment:* EPA is presently reviewing and revising effluent limitations guidelines for industries listed in Appendix A. In some cases, EPA may approve existing guidelines or choose not to develop new guidelines. If EPA decides not to develop new effluent guidelines, it will publish notice in the **Federal Register** as to that decision. Such a **Federal Register** notice would mean, in effect, that the guidelines are "approved" for the purpose of this regulation.]

(2) The permit incorporates:

(i) The "reopener clause" required by § 122.15(b)(1); and

(ii) Effluent limitations to meet the requirements of sections 301(b)(2) (A), (C), (D), (E) and (F) of the Act.

[*Comments:* (1) NPDES States are urged to issue short term permits expiring on or before the dates listed in Appendix A. This will ensure that all appropriate provisions of the Act, including compliance with the effluent limitations by the statutory deadlines, are met in permits issued after the promulgation of effluent guidelines under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2). Even if States issue long term permits with later expiration dates (in accordance with paragraph (c)(2)), dischargers are legally required to meet all applicable statutory deadlines and requirements, including compliance with any promulgated EPA effluent guidelines defining "best conventional pollutant control technology" (BCT) and "best available control technology economically achieveable" (BAT).

(2) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (c) is not conclusive as to the discharger's inclusion in that industrial category for any other prupose, and does not prejudice any rights to challenge or change that inclusion at the time a new permit based on that determination is formulated.]

(d) *Transferability of permits.* A permit may be transferred to another person by a permittee if:

(1) The permittee notifies the Director of the proposed transfer;

(2) A written agreement containing a specific date for transfer of permit responsibility and coverage between the current and new permittees (including acknowledgement that the existing permittee is liable for violations up to that date, and that the new permittee is liable for violations from that date on) is submitted to the Director; and

(3) The Director within 30 days does not notify the current permittee and the new permittee of his or her intent to modify, revoke and reissue, or terminate the permit and to require that a new application be filed rather than agreeing to the transfer of the permit.

[*Comment.* A new application could be required under this paragraph where the change of ownership is accompanied by a change or proposed change in process or wastewater characteristics or a change or potential change in any circumstances that the permitting authority believes will affect the conditions or restrictions in the permit.]

**§ 122.13 Prohibitions.**

No permit shall be issued in the following circumstances:

(a) Where the terms or conditions of the permit do not comply with the applicable guidelines or requirements of the Act, or regulations.

(b) Where the applicant is required to obtain a State or other appropriate certification under section 401 of the Act and Part 124, Subpart C, and that certification has not been obtained or been waived.

(c) By the State Director where the Regional Administrator has objected to issuance of the permit under § 123.23.

(d) Where the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States as required by section 401(a)(2) of the Act.

(e) Where, in the judgment of the Secretary, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge.

(f) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste.

(g) For any discharge from a point source inconsistent with a plan or plan amendment approved under section 208(b) of the Act.

(h) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

(1) Prior to the promulgation of the guidelines under section 403(c) of the Act, unless the Director determines permit issuance to be in the public interest; or

(2) After promulgation of guidelines under section 403(c) of the Act, where insufficient information exists to make a reasonable judgment as to whether the discharge complies with any such guidelines.

(i) To a facility which is a new source or a new discharger, if the discharge from the construction or operation of the facility will:

(1) Cause or contribute to the violation of water quality standards if the point of discharge is located in a segment that was an effluent limitation segment (as defined in 40 CFR § 130.2(o)(2)) prior to the introduction of the discharge from the new source or new discharger; or

(2) Exceed the total pollutant load allocation if the discharge is into a water quality segment as defined in 40 CFR § 130.2(o)(1).

The owner or operator of a facility which is a new source or new discharger into a water quality segment must also demonstrate, at the time of applying for a permit that there are sufficient remaining pollutant load allocations to allow the discharge and that the facility is entitled to these allocations.

**§ 122.14 Conditions applicable to all permits.**

The following conditions apply to all permits, whether issued by the Regional Administrator or the State Director. They shall be either expressly incorporated into the permit or incorporated by reference.

[*Comment:* If not incorporated by reference, the inclusion of the requirements of this section into permits may require some

wording changes. Where this is the case, the permit conditions should be worded substantially similar to the requirements of this section, and should be of equivalent force.]

(a) [Reserved]

[*Comment:* This paragraph is reserved pending publication of a revised NPDES application form. When a proposed revised application form is available this paragraph will be reproposed in a manner consistent with the proposed revised form. At that time EPA will outline a comprehensive scheme for the relationship between the data required in the application form, monitoring requirements, permit conditions, and the pollutants authorized to be discharged by the permit and not authorized to be discharged by the permit. The existing NPDES application forms should be utilized until the revised application form is available, except as otherwise provided in these regulations. See § 122.5.]

(b) All discharges shall be consistent with the terms and conditions of the permit.

(c) The permit may be modified, terminated, or revoked during its term for cause as described in § 122.31.

(d) If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the Act for a toxic pollutant and that standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the Director shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

[*Comment*: Effluent standards or prohibitions established under section 307(a) for toxic pollutants injurious to human health are effective within the time provided in the implementing regulations, even absent permit modification.]

(e) Any permittee who knows or has reason to believe that any activity has occurred or will occur which would constitute cause for modification or revocation and reissuance under § 122.31 must report its plans, or such information, to the Director so that the Director can decide whether action to modify or revoke and reissue a permit under § 122.31 will be required. The Director may then require submission of a new application. Submission of such application does not relieve the discharger of the duty to comply with the existing permit until it is modified or reissued.

(f) The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and such other documents as may be required by law:

(1) To enter upon the permittee's premises where a point source is located or where any records must be kept under the terms and conditions of the permit;

(2) To have access to and copy at reasonable times any records that must be kept under the terms and conditions of the permit;

(3) To inspect at reasonable times any monitoring equipment or method required in the permit;

(4) To inspect at reasonable times any collection, treatment, pollution management, or discharge facilities required under the permit; and

(5) To sample at reasonable times any discharge of pollutants.

(g) The permittee shall at all times maintain in good working order and operate as efficiently as possible all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance includes but is not limited to effective performance based on designed facility removals, adequate funding, effective management, adequate operator staffing and training, and adequate laboratory and process controls including appropriate quality assurance procedures.

(h)(1) If, for any reason, the permittee does not comply with or will be unable to comply with any maximum daily or average weekly discharge limitations or standards specified in the permit, the permittee shall, at a minimum, provide the Director with the following information as specified in paragraph (h)(2):

(i) A description of the discharge and cause of noncompliance;

(ii) The period of noncompliance, including exact dates and times and/or the anticipated time when the discharge will return to compliance; and

(iii) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

(2)(i) In the case of any discharge subject to any applicable toxic pollutant effluent standard under section 307(a), the information required by paragraph (1) regarding a violation of such standard shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. If this information is provided orally, a written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

(ii) In the case of other discharges which could constitute a threat to human health, welfare, or the environment, the Director may require that the information required by paragraph (1) be provided within 24 hours or five days from the time the permittee becomes aware of the circumstances. Where the Director requires 24-hour notice, if the information is provided orally, a written submission covering these points must be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

[*Comment:* Discharges that may be required to be reported within 24 hours under paragraph (h)(2)(ii) could include discharges containing section 311 pollutants or pollutants which could cause a threat to public drinking water supplies.]

(iii) Where a permittee orally reports a violation within 24 hours in accordance with paragraphs (h)(2) (i) or (ii), the Director may waive, on a case-by-case basis, the requirement that a written submission be provided within five days of the time the permittee becomes aware of the violation.

(iv) In all other cases this information shall be provided in the DMR in accordance with the requirements of § 122.22.

(i) The permittee shall take all reasonable steps to minimize any adverse impact to waters of the United States resulting from noncompliance with the permit.

(j) The permittee, in order to maintain compliance with its permit, shall control production and all discharges upon reduction, loss, or failure of the treatment facility unitl the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(k) *Bypass.*

(1) *Definitions.*

(i) "Bypass" means the intentional diversion of wastes from any portion of a treatment facility.

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) *Conditions necessary for bypass.* Bypass is prohibited unless the following four conditions are met:

(i) Bypass is unavoidable to prevent loss of life, personal injury or severe property damage;

(ii) There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment down-time;

(iii) The permittee submits notice of an unanticipated bypass to the Director within 24 hours of becoming aware of the bypass (if this information is provided orally, a written submission must be provided within five days). Where the permittee knows or should have known in advance of the need for a bypass, this prior notification shall be submitted for approval to the director, if possible, at least ten days before the date of the bypass;

[*Comment:* Fully efficient operation of treatment systems is required at all times. Although this generally requires the use of all portions of an existing treatment system, in some cases, maintenance necessary to ensure efficient operation may require bypassing portions of a system. Where such a bypass will not cause applicable effluent limitations or standards to be exceeded, it may be done without notification to the permitting authority. Where, however, a bypass is undertaken for reasons other than essential maintenance or where a bypass would cause effluent limitations or standards to be exceeded, it may be undertaken only in accordance with the provisions of this section.]

(iv) The bypass is allowed under conditions determined to be necessary by the Director to minimize any adverse effects. The public shall be notified and given an opportunity to comment on bypass incidents of significant duration, to the extent feasible.

(3) *Prohibition of bypass.* The Director may prohibit bypass in consideration of the adverse effect of the proposed bypass or where the proposed bypass does not meet the conditions set forth in paragraphs (k)(2) (i) and (ii).

[*Comment:* When a bypass occurs, the burden is on the discharger to demonstrate compliance with this paragraph. If the reason for the bypass was the need for regular preventive maintenance, for which backup equipment should have been provided by the discharger, in accordance with paragraph (2)(ii), the bypass will not be allowed. If there is any doubt as to the necessity of the bypass or the availability of methods to reduce or eliminate the discharge, appropriate enforcement action may be taken.]

(l) *Upset.*—(1) *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) *Effect of an upset.* An upset shall constitute an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph (1)(3) are met.

(3) *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the specific cause(s) of the upset;

(ii) The permitted facility was at the time being operated in a prudent and workman-like manner and in compliance with proper operation and maintenance procedures;

(iii) The permittee submitted information required in § 122.14(h)(1) within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days), and

(iv) The permittee complied with any remedial measures required under § 122.14(i).

(4) *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset shall have the burden of proof.

[*Comments:* (1) Upset is only available for permit limits which are based on technology. It is not available for non-technology-based requirements such as water quality standards, State laws, or health or environmentally based toxic pollutant effluent standards. (2) Although in the usual exercise of prosecutorial discretion, Agency enforcement personnel should review any claims that noncompliance was caused by an upset, no determination made in the course of the review constitutes final Agency action subject to judicial review. Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limitations.]

**§ 122.15 Applicable limitations, standards, prohibitions, and conditions.**

Each NPDES permit shall provide for and ensure compliance with all applicable requirements of the Act and regulations promulgated under the Act. For the purposes of this section, an applicable requirement is a statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit issued by a State with an approved NPDES program, or, in the case of a permit issued by EPA, which takes effect prior to the issuance of the permit except as provided in § 124.86(c). Permits shall ensure compliance with the following as applicable:

(a) Effluent limitations and standards under sections 301, 302, 303, 304, 307, 318, and 405 of the Act, including any interim final limitations and standards.

(b) For a discharger within any industrial category listed in Appendix A, requirements under section 307(a)(2) of the Act, as follows:

(1) Prior to the applicable permit expiration date listed in Appendix A,

(i) If applicable standards or limitations have not yet been issued:

(A) The permit shall include conditions stating that, if an applicable standard or limitation is issued or approved under sections 301(b)(2) (C) and (D), 304(b)(2) and 307(a)(2) and such effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or, alternatively, revoked and reissued in accordance with such effluent standard or limitation and any other requirements of the Act then applicable.

[*Comment:* The following language is an acceptable permit condition for the purposes of this section:

"This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable standard or limitation promulgated or approved under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:

(i) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or

(ii) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable."]

(B) The Director shall promptly modify, or alternatively revoke and reissue, the permit to incorporate an applicable standard or limitation under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) is issued or approved if such effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

[*Comment:* The requirements of this section are intended to assure compliance with the

1984 statutory deadline for the achievement of best available technology economically achievable for pollutants now listed under section 307(a)(1) of the Act. When a permit is modified or revoked and reissued pursuant to subparagraph (B), additional limitations may be included in the permit to assure achievement of applicable statutory requirements (e.g., best conventional pollutant control technology for "conventional" pollutants and best available technology economically achievable for "non-conventional" pollutants) by appropriate statutory deadlines.]

(ii) If applicable standards or limitations have been issued, the permit shall include those standards or limitations.

(2) Any permit issued after the applicable permit expiration date listed in Appendix A, shall include effluent limitations and a compliance schedule to meet the requirements of sections 301(b)(2) (A), (C), (D), (E), and (F) of the Act, whether or not applicable effluent limitations guidelines have been promulgated or approved. Such permits need not incorporate the clause required by paragraph (b)(1)(i)(A) of this section.

(c) Standards of performance for new sources under section 306 of the Act, including any promulgated interim final effluent limitations and standards.

(d) If the permit is for a discharge from a publicly owned treatment works, a condition requiring the permittee to:

(1) Provide adequate notice to the Director of the following:

(i) Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to sections 301 or 306 of the Act if it were directly discharging those pollutants; and

(ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

[*Comment:* For purposes of this paragraph, adequate notice shall include information on (1) the quality and quantity of effluent to be introduced into such POTW and (2) any anticipated impact of such change in the quantity or quality of effluent to be discharged from such POTW.]

(2) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under section 307(b) of the Act and 40 CFR Part 403.

(3) Establish a local program when required by and in accordance with 40 CFR Part 403 to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the permit as described in 40 CFR Part 403.

(4) Require any indirect discharger to such POTW to comply with the reporting requirements of sections 204(b), 307, and 308 of the Act, including any requirements established under 40 CFR Part 403.

(e) Any conditions imposed in grants made by the Administrator to POTWs under sections 201 and 204 of the Act which are reasonably necessary for the achievement of effluent limitations under section 301 of the Act.

[*Comment:* Among other things, this paragraph contemplates permit conditions embodying measures to protect the POTW against overloading and schedules of compliance which are consistent with, and determined from, construction grant award dates.]

(f) Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 where necessary to:

(1) Achieve water quality standards established under section 303 of the Act;

(2) Attain or maintain a specified water quality through water quality related effluent limits established under section 302 of the Act;

(3) Conform to the conditions of a State certification under section 401 of the Act where EPA is the permit issuing authority;

(4) Conform to applicable water quality requirements under section 401(a)(2) of the Act when the discharge affects a State other than the certifying State;

(5) Incorporate any more stringent limitations, treatment standards or schedules of compliance requirements established under Federal or State law or regulations in accordance with section 301(b)(1)(C) of the Act;

(6) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under section 208(b) of the Act;

(7) Incorporate section 403(c) criteria under Part 125 Subpart M for ocean discharges;

(8) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under Part 125 Subpart D;

(9) Incorporate other requirements, or conditions, or limitations into a new source permit under the National Environmental Policy Act 42 U.S.C. §§4321 *et seq.* and section 511 of the Act, where EPA is the permit issuing authority;

(10) Establish on a case-by-case basis technology-based limitations controlling a pollutant not included in promulgated effluent limitation guidelines or standards in accordance with §125.3.

(g) Best management practices to control or abate the discharge of pollutants where:

(1) Authorized under section 304(e) of the Act for the control of toxic and hazardous pollutants from ancillary industrial activities;

(2) Numeric effluent limitations are infeasible; or

(3) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes of the Act.

[*Comment:* Examples of best management practices which may be imposed under (g)(2) include: a) proper operator qualifications of treatment facility personnel (see Decision of the General Counsel No. 19), and b) sludge-handling requirements (see Decision of General Counsel No. 33). Examples of best management practices which may be imposed under (g)(3) include: a) coal mining operation's diversion of water from an active coal mining area to prevent contact between water and iron pyrites which could react to form sulfuric acid and wastewaters with low pH values; (b) the construction of sheds over material storage piles to prevent rainfall from leaching materials from these piles and creating a source of pollution; (c) ditching and diversion of rainfall runoff for treatment prior to discharge; and (d) the use of solid, absorbent materials for cleaning up leaks and drips as opposed to washing these materials down a floor drain creating additional sources of pollution. Although these best management practices under (g)(2) and (3) would be required under the authority of *NRDC* v. *Costle,* (Runoff Point Sources) 568 F.2d 1369 (D.C. Cir. 1977) they are similar to those in (g)(1) and Subpart K of Part 125 imposed for toxic and hazardous materials under section 304(e).]

(h) Requirements under section 405 of the Act governing the disposal of sewage sludge from publicly owned treatment works, in accordance with any applicable regulations.

(i) Where a permit is renewed or reissued, interim limitations, standards, or conditions which are at least as stringent as the final limitations, standards or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.31). Where effluent limitations were imposed under section 402(a)(1) of the Act in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, this paragraph shall apply unless:

(1) The discharger has installed the treatment facilities contemplated by the discharger in connection with the issuance of the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent that required by the subsequently promulgated effluent guidelines);

(2) In the case of an approved State, State law prohibits permit conditions more stringent than an applicable effluent guideline; or

(3) The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (section 301(b)(2)(E) of the Act).

(j) In the case of a permit issued to a facility that may operate at certain times as a means of transportation over water, a general condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, and storage of pollutants.

(k) Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired.

**§ 122.16 Calculation and specification of effluent limitations and standards.**

(a)(1) All permits shall impose final, and where necessary, interim final effluent limitations, standards and prohibitions under §§ 122.14 and 122.15 for each outfall or discharge point of the permitted facility, except as otherwise provided under § 122.15(g)(2) and § 122.16(i).

(2) Except in the case of POTWs, permit limitations, standards or prohibitions shall be calculated based on the actual production and not the designed production capacity of the facility where the promulgated effluent guideline limitations and standards are based on production.

[*Comment:* Where design capacity is not representative of actual production, permit limitations will be calculated to reflect a reasonable measure of actual production, such as the high month during the previous year, or the monthly average for the highest year of the previous five years, for facilities where such data is available. For new sources, or new discharges, actual production generally will be projected production based on market data, and permit limitations may require modification once actual production figures are available.]

(3) In the case of POTWs, permit limitations, standards, or prohibitions shall be calculated based on design flow.

(b) All interim and final permit effluent limitations, standards, or prohibitions established under §§ 122.14 and 122.15 for a metal shall be expressed in terms of the total metal (i.e., the sum of the dissolved and suspended fractions of the metal) unless:

(1) The promulgated effluent limitation and standard under the Act specifies the limitation for the metal in the dissolved or valent form; or

(2) In establishing permit limitations on a case-by-case basis, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of the Act.

(c) For continuous discharges all interim and final permit effluent limitations, standards, and prohibitions established under §§ 122.14 and 122.15, including those necessary to achieve water quality standards, shall be stated as maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works, and average weekly and average monthly discharge limitations for POTWs.

For the purposes of this part:

(1) A "continuous discharge" means a discharge which occurs without interruption, except for infrequent shutdowns for maintenance, process changes, or other similar activities throughout the operating hours of the facility.

(2) The "maximum daily discharge" is the total mass of a pollutant discharged during the calendar day or, in the case of a pollutant limited in terms other than mass pursuant to paragraph (d), the average concentration or other measurement of the pollutant specified during the calendar day or any 24-hour period that reasonably represents the calendar day for the purposes of sampling. The maximum daily discharge limitation may not be violated during any calendar day.

(3) The "average monthly discharge limitation" is the total mass, and concentration in the case of POTWs, of all daily discharges sampled and/or measured during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such month. The average monthly discharge limitation may not be violated during any calendar month.

(4) The "average weekly discharge limitation" is the total mass and concentration of all daily POTW discharges during any calendar week on which daily discharges are sampled and/or measured, divided by the number of daily discharges sampled and/or measured during such calendar week. The average weekly discharge limitation may not be violated during any calendar week.

[*Comment:* Calculations for all such limitations which require averaging of measurements or of daily discharges, shall utilize an arithmetic mean average, unless otherwise specified or approved by the Director.]

(d) Paragraph (c) is not applicable:

(1) For pH, temperature, radiation or other pollutants which cannot be appropriately expressed by mass; or

(2) Where applicable promulgated effluent guideline limitations, standards, or prohibitions are expressed in other terms than mass, e.g., as concentration levels.

(e) Except as provided in paragraph (f), effluent limitations imposed in permits shall not be adjusted for pollutants in the intake water.

(f)(1) Upon request of the discharger, effluent limitations or standards imposed in a permit will be calculated on a "net" basis, i.e., adjusted to reflect credit for pollutants in the discharger's intake water, if the discharger demonstrates that its intake water is drawn from the same body of water into which the discharge is made and if:

(i)(A) The applicable effluent limitations and standards contained in Subchapter N of this Chapter specifically provide that they shall be applied on a net basis; or

(B) The discharger demonstrates that pollutants present in the intake water will not be substantially removed by the treatment systems operated by the discharger; and

(ii) The permit contains conditions requiring the permittee to conduct additional monitoring (i.e., for flow and concentration of pollutants) as necessary to determine continued eligibility for and compliance with any such adjustments.

The discharger shall notify the Director if this monitoring indicates that eligibility for an adjustment under this section has been altered or no longer exists. In such case, the permit shall be modified or revoked and reissued under § 122.31.

(2) Permit effluent limitations or standards adjusted under this paragraph shall be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the

discharger. Adjustments under this paragraph shall be given only to the extent that pollutants in the intake water which are limited in the permit are not removed by the treatment technology employed by the discharger. In addition, effluent limitations or standards shall not be adjusted when the pollutants in the intake water vary physically, chemically or biologically form the pollutants limited by the permit. Nor shall effluent limitations or standards be adjusted when the discharger significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same.

(g) Discharges which are not continuous, as defined in paragraph (c), shall be particularly described and limited, considering the following factors, as appropriate:

(1) Frequency (e.g., a batch discharge shall not occur more than once every 3 weeks);

(2) Total mass (e.g., not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);

(3) Maximum rate of discharge of pollutants during the discharge (e.g., not to exceed 2 kilograms of zinc per minute); and

(4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (e.g., shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (¼ kilogram) of zinc in any discharge).

(h) Where permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams prior to mixing with other waste streams or cooling water streams. In such instances, the monitoring required by Subpart C shall also be applied to the internal waste streams.

[*Comment:* Limits on internal waste streams will only be imposed in exceptional circumstances, such as where the final discharge point is inaccessible (e.g., under 10 meters of water), where the wastes at the point of discharge are so diluted as to make monitoring impracticable, or where the interferences among pollutants at the point of discharge would make detection and/or analysis impracticable.]

**§ 122.17 Schedules of compliance.**

(a) Permits shall contain schedules of compliance requiring the permittee to take specific steps where necessary to achieve expeditious compliance with applicable standards and limitations and other requirements. Schedules of compliance shall require compliance as soon as possible, but in no case later than an applicable statutory deadline.

(b) If any permit allows a time for achieving final compliance which exceeds 9 months from the date of permit issuance, the schedule of compliance in the permit shall set forth interim requirements and the dates for their achievement. Examples of interim requirements include the following events: submit complete Step 1 construction grant (for POTWs); let contract (for nonPOTWs); commence construction and complete construction.

(1) In no event shall more than 9 months elapse between dates specified for interim requirements.

(2) If the time necessary for completion of any interim requirements (such as the construction of a treatment facility) is more than nine months and is not readily divisible into stages for completion, the permit shall specify interim dates not more than nine months apart for the submission of reports of progress toward completion of the interim requirements.

(c) A permittee may terminate its direct discharge by cessation of operation or discharge to a POTW rather than achieve applicable standards and limitations by the final date for compliance established in its permit or in the Act under the following circumstances:

(1) If the decision to terminate a direct discharge is made after issuance of a permit:

(i) The permit shall be modified or revoked and reissued to contain a schedule of compliance leading to termination of the direct discharge by a date which is no later than the statutory deadline; or

(ii) The permittee shall terminate direct discharge before noncompliance with any interim requirement specified in the schedule of compliance in the permit.

(2) If the decision to terminate a direct discharge is made before issuance of the permit, the permit shall contain a schedule leading to termination of the direct discharge by a date which is no later than the statutory deadline.

(3) If the permittee contemplates but has not made a final decision to terminate the direct discharge before the issuance of the permit, the permit shall contain alternative schedules leading to compliance as follows:

(i) The schedule shall contain an interim requirement requiring such a final decision no later than a date which allows sufficient time to comply with applicable limitations and standards in accordance with paragraph (c)(3)(iii) of this section, (i.e., a milestone event for commencement of construction of control equipment); and

(ii) A subsequent schedule leading to termination of the direct discharge by a date which is no later than the statutory deadline; and

(iii) A subsequent alternative schedule leading to compliance with applicable standards and limitations, no later than the statutory date; and

(iv) A requirement that after the permittee has made a decision pursuant to paragraph (c)(3)(i) of this section, it shall:

(A) Follow the Schedule required by paragraph (c)(3)(ii) of this section if the decision is to terminate its discharge, or

(B) Follow the schedule required by paragraph (c)(3)(iii) of this section if the decision is not to terminate its discharger; and

(4) If the permittee has made a decision to terminate its direct discharge in accordance with this section, it shall post a bond within 30 days of permit issuance, or the date of the decision, in the amount of the cost of compliance with applicable limitations and standards, payable to the permit issuing authority in the event that termination or compliance with applicable limitations and standards is not achieved by the statutory deadline or the date set forth in the permit, if earlier.

(5) In all cases, the permittee's decision to terminate its direct discharge of pollutants shall be evidenced by a Board of Directors resolution which has been made public or by such other means as EPA determines evidences a firm public commitment.

[*Comment*: A permittee may evidence a firm public commitment: (1) by a resolution of the Board of Directors signed by the Chairman of the Board and the Chief Executive Officer; (2) in the case of a public facility, by appropriate action by either the principal executive officer or elected official or (3) as otherwise appropriate for partnerships, sole proprietorship, etc.]

(d) The Director may, upon request of the applicant, modify a schedule of compliance in an issued permit if he or she determines good and valid cause (such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control or remedy) exists for such modification under § 122.31. In no case shall the compliance schedule be modified to extend beyond an applicable statutory treatment deadline.

(e) In the case of a POTW which has received a grant under section 202(a)(3) of the Act, to fund 100% of the costs to modify or replace facilities construction

with a grant for innovative and alternative wastewater technology under section 202(a)(2), the schedule of compliance may be modified to reflect the amount of time lost during construction of the innovative and alternative facility. In no case shall the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance.

(f) New sources, new dischargers, sources which recommence discharging after terminating operations and those sources which had been indirect dischargers which commence discharging into navigable waters do not qualify for compliance schedules under this section and are subject to § 122.47(d)(4).

## Subpart C—Permit Compliance

### § 122.20 Monitoring.

(a) To assure compliance with permit terms and conditions, all permittees shall monitor as specified in the permit:

(1) The amount, concentration, or other measurement specified in § 122.16 for each pollutant specified in the permit;

(2) The volume of effluent discharged from each point source; and

(3) As otherwise specifically required in the permit, e.g., as required under § 122.16(g)(2).

(b) For purposes of paragraph (a), the Director shall specify the following monitoring requirements in the permit:

(1) Requirements concerning proper installation, use, and maintenance of monitoring equipment or methods (including biological monitoring methods where appropriate);

(2) Monitoring frequency, type, and intervals sufficient to yield continuing data representative of the volume of effluent flow and the quantity of pollutants discharged. Variable effluent flows and pollutant quantities shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant quantities; and

(3) Test procedures for the analysis of pollutants meeting the requirements of paragraph (c) of this section.

(c)(1) Test procedures identified in 40 CFR Part 136 shall be utilized for pollutants or parameters listed in that Part, unless an alternative test procedure has been approved under that Part.

(2) Where no test procedure under 40 CFR Part 136 has been approved, the Director shall specify a test method in the permit.

(3) Notwithstanding paragraph (c)(1) of this section, the Director may specify in a permit the test procedure used in developing the data on which an effluent limitations guideline was based, or specified by the standards and guidelines.

(4) Where a method approved under 40 CFR Part 136 for any pollutant or parameter was used in developing the applicable standards and limitations or is specified by the standards and limitations, the same method shall be specified in the permit.

(d) The sampling frequency and other monitoring requirements specified by the Director under paragraph (b) of this section shall, to the extent applicable, be consistent with monitoring requirements specified in a standard or effluent limitations guideline on which the effluent limitations in the permit are based.

(e) If the permittee believes that the monitoring requirements specified by the Director under paragraph (b) of this section in any draft permit under § 124.31 are not sufficient to yield data representative of the volume of effluent flow and the quantity of pollutants discharged, it should request that additional monitoring requirements sufficient to yield such data be included in the final permit. Compliance with effluent limitations contained in the permit will be determined in accordance with the monitoring requirements specified in the permit which, when finally effective, are deemed to yield data representative of the volume of effluent flow and the quantity of pollutants discharged.

(f) The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this section shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

### § 122.21 Recording of monitoring results.

(a) Any permittee required to monitor under § 122.20 shall maintain records of all monitoring information and monitoring activities, including:

(1) The date, exact place and time of sampling or measurements;

(2) The person(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The person(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

(b) All records of monitoring activities and results (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records) shall be retained by the permittee for three years. The three-year period shall be extended:

(1) Automatically during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or regarding promulgated effluent guidelines applicable to the permittee, or

(2) As requested by the Director.

(c) The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document required to be maintained under this section shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

### § 122.22 Reporting of monitoring results and compliance by permittees.

(a) Permittees shall report to the Director, using Discharge Monitoring Reports, the results of any monitoring specified by the permit. This includes reporting of the results of monitoring required by § 122.20 to the Director, as often as required by the permit, but in no case less than once per year. Other monitoring data not specifically required in the permit (such as internal process or internal waste stream data) or data collected by third parties need not be submitted unless it indicates a violation, but it shall be identified and referenced as a supplement to the DMR.

[*Comment:* Reporting frequency depends upon the nature and effect of the discharge. For discharges such as small volume, non-contact cooling water, annual report submission may be sufficient. Discharges which require more frequent reporting include: variable discharges; discharges which contribute significant amounts of pollutants to the waters of the United States; discharges which contain toxic or hazardous pollutants or other pollutants of concern; and discharges which apply new treatment or control methods.]

(b) If the permittee monitors any pollutant more frequently than required by the permit, using approved analytical methods, the results of this monitoring shall be reported in the DMR. For purposes of this paragraph, "approved analytical methods" are those test procedures for the analysis of pollutants which conform to 40 CFR 136 or are specified in the permit.

(c) Within 14 days after each interim or final permit compliance schedule date, the permittee shall provide the Director with written notice of the permittee's compliance or

noncompliance with the interim or final requirements.

(d) The Act provides that any person who knowingly makes any false statement, representation, or certification in the monitoring report or notice of compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

**§ 122.23 Noncompliance reporting.**

(a) On the last working day of February, May, August, and November, the State Director shall submit to the Enforcement Division Director information concerning noncompliance with NPDES permit requirements by major dischargers in the State in accordance with the reporting schedule contained in paragraph (g). The Enforcement Division Director shall submit such information, and shall also prepare and submit information for EPA-issued permits, to the EPA Office of Water Enforcement in accordance with paragraph (g).

(b) The reports required by paragraph (a) shall include the following information:

(1) *Failure to complete construction elements.* Noncompliance shall be reported:

(i) When the permittee has failed to complete by the date specified in the permit, an element of the compliance schedule (e.g., award of contract, preliminary plans, begin construction or attain operational level); and

(ii) The permittee has not returned to compliance by accomplishing the requirements of the permit within 30 days from the date a report is due under § 122.22(c).

(2) *Failure to complete or provide compliance schedule reports.* Noncompliance shall be reported in the following circumstances:

(i) When the permittee fails to complete or provide a report required in the permit compliance schedule or under § 122.22 (e.g., progress reports or notification of compliance or noncompliance); and

(ii) The permittee has not returned to compliance by submitting the report within 30 days from the date it is due under § 122.22(c).

(3) *Noncompliance with applicable standards and limitations.* Noncompliance shall be reported:

(i) When the permittee has violated an applicable standard or limitation and has not returned to compliance with the NPDES permit requirements within 45 days from the date that the DMR or notification of noncompliance under § 122.14(h) was due; or

(ii) When a pattern of noncompliance with applicable standards or limitations as determined by the Director exists for any major discharger over a period of 12 months prior to the end of the current reporting period. This pattern of noncompliance is based on violation of monthly averages and excludes parameters where there is continuous monitoring. A pattern of noncompliance shall be reported whenever there is:

(A) Any violation of the same permit or limitation or standard in two consecutive quarters; and

(B) Any violation of one or more permit limitations or standards in each of four consecutive quarters; or

(iii) When, as determined by the Director, a significant discharge of a pollutant occurs, such as a discharge of a toxic or hazardous substance.

(4) *Failure to Report Effluent Data.* Noncompliance shall be reported where the permittee has failed to provide a DMR within 30 days of the date it is due or where the permittee has exceeded effluent limitations and has failed to report this noncompliance.

(5) *Deficient Reports.* Noncompliance shall be reported where the required reports provided by the permittee are so deficient as to cause misunderstanding by the permit issuing authority and thus impede the review of the status of compliance.

(6) *Modifications to schedules of compliance under § 122.17(d).* Noncompliance resulting from or constituting the basis for a modification under § 122.17(d) shall be reported.

[*Comment:* Noncompliance reported under paragraph (b) shall be reported in successive reports until the noncompliance is resolved. The resolution of noncompliance shall be reported, and when the noncompliance is reported as resolved, it will not appear in subsequent reports.]

(c) The narrative information required under paragraph (b) shall:

(1) Include the following data in the following order:

(i) Name, location, and permit number of each noncomplying permittee;

(ii) A brief description and date of each instance of noncompliance;

(iii) The date(s) and a brief description of the action(s) taken by the Director to insure compliance;

(iv) Status of the instance of noncompliance with the date of the action or resolution;

(v) Any details which tend to explain or mitigate an instance of noncompliance; and

(2) Provide separate lists for non-POTWs, POTWs, and Federal permittees:

(3) Combine information concerning schedule and effluent noncompliance in a single entry for each permittee; and

(4) Alphabetize all narrative listings by permittee name. Where two or more permittees have the same name, the lowest permit number shall govern the order of entry, i.e., the lowest number shall be entered first.

(d) Statistical information shall be reported quarterly on all other instances of noncompliance with permit requirements by major dischargers not set forth in paragraph (b) of this section.

(e) For minor dischargers whose compliance has been reviewed by the permitting authority, statistical information on the types of noncompliance listed under paragraph (b) of this section shall be reported annually. In addition, a separate list of minor dischargers which are one or more years behind in construction phases of the compliance schedule shall be submitted annually in alphabetical order by name and permit number.

(f) *Reporting schedules:* (1) The schedule for reporting noncompliance by major dischargers under paragraphs (b), (c), and (d) of this section shall be as follows:

| Quarters [1] | Dates for completion of reports |
|---|---|
| January, February, and March | May 31.[2] |
| April, May, and June | August 31.[2] |
| July, August, and September | November 30.[2] |
| October, November, and December | February 28.[2] |

[1] Covered by reports on noncompliance by major dischargers.

[2] Report made available to the public on this date.

(2) The annual reporting period for noncompliance by minor dischargers under paragraph (e) of this section shall end at the end of the Federal fiscal year (currently September 30), with reports completed and available to the public no more than 60 days later.

(g) All reports prepared under this section shall be made available to the public for inspection and copying.

[*Comment:* The distinction between "major" and "minor" dischargers is established in EPA's annual operating guidance for the EPA Regional Offices and the States.]

## Subpart D—Permit Modification, Revocation and Reissuance, and Termination

**§ 122.30 General.**

Permits shall be (a) modified, (b) revoked and reissued, or (c) terminated

only as authorized in this Subpart, and then only in conformance with applicable provisions of Part 124.

**§ 122.31 Modification, revocation and reissuance, and termination.**

(a) An issued permit may be modified in whole or in part, revoked and reissued, or terminated during its term for cause as specified in this section.

(b) Permit modifications shall not be used to extend the term of a permit beyond 5 years from the original date of issuance.

(c) Modification, revocation and reissuance, or termination of an issued permit may be initiated by the Director under applicable provisions of Part 124. Any interested person may request the Director to modify, revoke and reissue, or terminate an issued permit.

(d) Causes for modification, revocation and reissuance, or termination include the following:

(1) Violation of any term or condition of the permit;

(2) Failure of the permittee to disclose fully all relevant facts or misrepresentation of any relevant facts by the permittee in the application or during the permit issuance process;

(3) A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (e.g., plant closure, termination of discharge by connection to a POTW, the promulgation of any applicable effluent standard or prohibition under section 307 of the Act, any change in State law that requires the reduction or elimination of the discharge, etc.);

(4) Information indicating that the permitted discharge poses a threat to human health or welfare; or

(5) A change in ownership or control of a source which has a permit, where required by the Director in accordance with § 122.12(d).

(e) In addition to the provisions of paragraph (d) of this section, causes for modification, or revocation and reissuance, but not termination, of a permit include the following:

(1) Material and substantial alterations or additions to the discharger's operation which were not covered in the effective permit (e.g., production changes, relocation or combination of discharge points, changes in the nature or mix of products produced), provided that such alterations do not constitute total replacement of the process or production equipment causing the discharge which converts it into a new source;

[*Comment:* Certain reconstruction activities may cause the new source provisions of section 306 to become applicable to the discharger. (See § 122.47.) In such cases the new source permit issuance procedures of § 124.12 should be followed rather than the modification procedures of § 124.13.]

(2) The existence of a factor or factors which, if properly and timely brought to the attention of the Director, would have justified the application of limitations or other requirements different from those required by applicable standards or limitations but only if the requester shows that such factor or factors arose after the final permit was issued;

(3) Revision, withdrawal, or modification of water quality standards or EPA promulgated effluent limitations guidelines (including interim final effluent limitations guidelines), *but only when:*

(i) The permit term or condition requested to be modified or revoked was based on a promulgated effluent limitations guideline or an EPA approved or promulgated water quality standards

(ii)(A) EPA has revised, withdrawn, or modified that portion of the effluent limitations guidelines on which the permit term or condition was based; or

(B) EPA has approved a State action with regard to a water quality standard on which the permit term or condition was based; and

(iii) A request for modification, or revocation and reissuance, is filed in accordance with § 124.13 (or applicable State procedures meeting the requirements of § 124.13) within ninety (90) days after **Federal Register** notice of:

(A) Revision, withdrawal, or modification of that portion of the effluent limitations guidelines; or

(B) EPA approval of State action regarding a water quality standard;

(4) Judicial remand of EPA promulgated effluent limitations guidelines, if the remand concerns that portion of the guidelines on which the permit term or condition was based and the request is filed within ninety (90) days of the judicial remand;

(5) Any modification, or revocation and reissuance of permits specifically authorized by the Act, e.g., sections 301(c), 301(g), 301(h), 301(i) or 301(k);

(6) As necessary under §§ 122.14(d), 122.15(b) and 122.17 (c) and (e); or

(7) Failure of an approved State to notify another State whose waters may be affected by the discharge from the approved State, as required by section 402(b)(3) of the Act.

(f) The following permit modifications shall not require public notice and opportunity for hearing under Part 124 unless they would render the applicable standards and limitations in the permit less stringent, or unless contested by the permittee:

(1) Correction of typographical errors;

(2) A change requiring more frequent monitoring or reporting by the permittee;

(3) A change in an interim compliance date, but not beyond 120 days and not where the change would interfere with the attainment of a final compliance date;

(4) A change in ownership or control of a source which has a permit where no other change in the permit is necessary and where transfer is accomplished in accordance with § 122.12(d);

(5) A change in the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under § 122.47(d)(4); and

(6) Deletion of a point source outfall, where the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

## Subpart E—Special NPDES Programs

**§ 122.40 General.**

The following sections described NPDES program coverage for certain categories of point source dischargers.

**§ 122.41 Disposal of pollutants into wells, into publicly owned treatment works, or by land application.**

(a) Where part of a discharger's process waste water is not being discharged into waters of the United States or contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the United States, applicable effluent limitations and standards for the discharge in the permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(1) If none of the waste from a particular process is discharged into waters of the United States, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards;

(2) In all cases other than those described in paragraph (1), effluent

limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the United States, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under Part 125, Subpart D to make them more stringent if dischargers to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

[*Comments* This method may be algebraically expressed as:
$P = E \times N / T$; where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.]

(b) Paragraph (a) shall not apply where promulgated effluent limitations guidelines:

(1) Control concentrations of pollutants discharged, but not mass; or

(2) Specify a different specific technique for adjusting effluent limitations to account for well injection.

(c) Paragraph (a) does not alter a discharger's obligation to meet any more stringent requirements established under §§ 122.14 and 122.15.

**§ 122.42 Concentrated animal feeding operations.**

(a) Concentrated animal feeding operations are point sources subject to the NPDES permit program.

(b) *Definitions.*

(1) "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals (other than aquatic animals) have been, are, or will be, stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(2) "Concentrated animal feeding operation" means an animal feeding operation which meets the criteria set forth in paragraphs (b)(2) (i), (ii), or (iii) of this section:

(i) More than the numbers of animals specified in any of the following categories are confined:

(A) 1,000 slaughter and feeder cattle,

(B) 700 mature dairy cattle (whether milked or dry cows),

(C) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),

(D) 500 horses,

(E) 10,000 sheep or lambs,

(F) 55,000 turkeys,

(G) 100,000 laying hens or broilers (if the facility has a continuous overflow watering),

(H) 30,000 laying hens or broilers (if the facility has a liquid manure system),

(I) 5,000 ducks, or

(J) 1,000 animal units; or

(ii) More than the following numbers and types of animals are confined:

(A) 300 slaughter or feeder cattle,

(B) 200 mature dairy cattle (whether milked or dry cows),

(C) 750 swine each weighing over 25 kilograms (approximately 55 pounds),

(D) 150 horses,

(E) 3,000 sheep or lamb,

(F) 16,500 turkeys,

(G) 30,000 laying hens or broilers (if the facility has continuous overflow watering),

(H) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),

(I) 1,500 ducks, or

(J) 300 animal units;

and either one of the following conditions are met: pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or pollutants are discharged directly into navigable waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation. Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24 hour storm event.

(iii) The Director determines that the operation is a significant contributor of pollution to waters of the United States, in accordance with paragraph (c).

(3) The term "animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds), multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(4) The term "man-made" means constructed by man and used for the purpose of transporting wastes.

(c) *Case-by-case designation of concentrated animal feeding operations.*

(1) Notwithstanding any other provision of this section, any animal feeding operation may be designated as a concentrated animal feeding operation where it is determined to be a significant contributor of pollution to the waters of the United States. In making this designation the Director shall consider the following factors:

(i) The size of the animal feeding operation and the amount of wastes reaching waters of the United States;

(ii) The location of the animal feeding operation relative to waters of the United States;

(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the United States; and

(v) Other such factors relative to the significance of the pollution problem sought to be regulated.

(2) No animal feeding operation with less than the numbers of animals set forth in paragraphs (b)(2) (i) and (ii) of this section designated as a concentrated animal feeding operation unless:

(i) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and pass over, across, through the facility or otherwise come into direct contact with the animals confined in the operation.

(3) In no case shall a permit application be required from a concentrated animal feeding operation designated under this paragraph until there has been an onsite inspection of the operation and a determination that the operation should and could be regulated under the permit program.

**§ 122.43 Concentrated aquatic animal production facilities.**

(a) Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Concentrated aquatic animal production facility"

means a hatchery, fish farm, or other facility which contains, grows, or holds:

(i) Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

(A) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(B) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(ii) Warm water fish species or other warm water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year, but does not include:

(A) Closed ponds which discharge only during periods of excess runoff; or

(B) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

(2) "Cold water aquatic animals" include, but are not limited to, the *Salmonidae* family of fish, e.g., trout and salmon.

(3) "Warm water aquatic animals" include, but are not limited to, the *Ameiuride, Centrarchidae* and *Cyprinidae* families of fish, e.g., respectively catfish, sunfish, and minnows.

(c) *Case-by-case designation of concentrated aquatic animal production facilities.* Any warm or cold water aquatic animal production facility not otherwise falling within the definitions provided in paragraph (b) may be designated as a concentrated aquatic animal production facility where the facility is determined to be a significant contributor of pollution to waters of the United States. In making this designation the Director shall consider the following factors:

(1) The location and quality of the receiving waters of the Unites States;

(2) The holding, feeding, and production capacities of the facility;

(3) The quantity and nature of the pollutants reaching waters of the United States; and

(4) Other such factors relating to the significance of the pollution problem sought to be regulated.

In no case shall a permit application be required from a concentrated aquatic animal production facility designated under this paragraph until there has been an on-site inspection of the facility and a determination that the facility should and could be regulated under the permit program.

**§ 122.44 Aquaculture projects**

(a) Discharges into aquaculture projects, as defined in this section, are subject to the NPDES permit program through section 318 of the Act, and in accordance with Part 125, Subpart B.

(b) *Definitions.* (1) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(2) "Designated project area" means the portions of the waters of the United States within which the applicant for a permit plans to confine the cultivated species, using a method or plan or operation (including, but not limited to physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants permitted under this section and be harvested within a defined geographic area.

**§ 122.45 Separate storm sewers.**

(a) Separate storm sewers, as defined in this section, are point sources subject to the NPDES permit program. Separate storm sewers may be covered either under individual NPDES permits or under the general permit program (see § 122.48).

(b) *Definition.* "Separate storm sewer" means a conveyance or system of conveyances (including but not limited to pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and either:

(1) Located in an urbanized area as designed by the Bureau of Census according to the criteria in 39 FR 15202 (May 1, 1974); or

(2) Not located in an urbanized area but designated as a significant contributor of pollution under paragraph (c).

"Separate storm sewer" does not include any conveyance which discharges process wastewater or storm water runoff contaminated by contact with wastes, raw materials, or pollutant-contaminated soil, from lands or facilities used for industrial or commercial activities, into waters of the United States or into separate storm sewers. Such discharges are subject to the general provision of this Part.

[*Comment:* Whether or not a system of conveyances is or is not a separate storm sewer for purposes of this Part shall have no bearing on whether or not the system is eligible for funding under Title II of the Act, see 40 CFR § 35.925-21.]

(c) *Case-by-case designation of separate storm sewers.* The Director may designate a storm sewer not located in an urbanized area as a separate storm sewer. This designation may be made to the extent allowed or required by EPA promulgated effluent guidelines for point sources in the separate storm sewer category or when:

(1) A Water Quality Management plan under section 208 of the Act, which contains requirements applicable to such point sources is approved; or

(2) A storm sewer is determined to be a significant contributor of pollution to the waters of the United States. In making this determination the following factors shall be considered:

(i) The location of the storm sewer with respect to waters of the United States;

(ii) The size of the storm sewer;

(iii) The quantity and nature of the pollutants reaching waters of the United States; and

(iv) Other such factors relating to the significance of the pollution problems sought to be regulated.

[*Comment:* An NPDES permit for discharges into waters of the United States from a separate storm sewer covers all conveyances which are a part of that separate storm sewer system, even though there may be several owners-operators of such conveyances. However, discharges into separate storm sewers from point sources which are not part of the separate storm sewer systems may also require a permit.]

**§ 122.46 Silvicultural activities.**

(a) Silvicultural point sources, as defined in this section, are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States.

[*Comment:* The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation, and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, and road construction and maintenance from which there is runoff during precipitation events. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a section 404 permit (see 33 CFR § 209.120).]

(2) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel and riprap (see 40 CFR Part 436, Subpart B, and the effluent limitations guidelines pursuant thereto).

(3) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, i.e. logs or roundwood with bark or after removal of bark in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). (See 40 CFR Part 429, Subpart J, and the effluent limitations guidelines pursuant thereto.)

**§ 122.47 New sources and new dischargers.**

(a) *Definitions.* (1) "New source" and "new discharger" are defined in § 122.3 (u) and (v).

(2) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants;

(3) "Existing source" means any source which is not a new source or a new discharger;

(4) "Site" means the land or water area upon which a source and its water pollution control facilities are physically located, including but not limited to adjacent land used for utility systems, repair, storage, shipping or processing areas, or other areas incident to the industrial, manufacturing, or water pollution treatment processes.

(5) "Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, provided that such facilities or equipment are of such value as to represent a substantial commitment to construct. It does not include facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(b) *Criteria and standards for new source determination.* (1) The following construction activities result in a new source as defined in § 122.3.

(i) Construction of a source on a site where another source is not located, or

(ii) Construction of a source on a site where another source is located, provided that the process or production equipment which causes the discharge of pollutants from the other source is totally replaced by this construction or the construction results in a new or additional discharge.

[*Comment:* The fact that a source is constructed on a site so that it shares or uses common land or water areas of another source for utility systems, repair, storage, or shipping does not prevent that source from being considered a new source.]

(2) The modification of an existing source by changing existing process or production equipment, replacing existing process or production equipment (except as provided in paragraph (b)(1)), or by the addition of such equipment on the site of the existing source which results in a change in the nature or quantity of pollutants discharged is not a new source under this section. Modifications of this nature are subject to the provisions of § 122.31(e)(2).

(3) Construction of a new source as defined under § 122.3(v) has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous on-site construction program:

(A) Any placement, assembly, or installation of facilities or equipment;

(B) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered a binding contractual obligation for the purchase of facilities or equipment which is intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(c) *Requirement of an Environmental Impact Statement.* (1) The issuance of a permit to a new source:

(i) By EPA may be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 33 U.S.C. 4321 *et seq.* and is subject to the environmental review provisions of NEPA as set out in 40 CFR 6, Subpart I. EPA will determine whether an Environmental Impact Statement (EIS) is required under § 124.12 and 40 CFR 6, Subpart I;

(ii) By an NPDES-approved State is not a Federal action and therefore does not require EPA to conduct an environmental review.

(2) The EIS shall include a recommendation on whether the permit is to be issued or denied.

(i) If the recommendation is to deny the permit, the final EIS shall contain the reasons for the recommendation and list those measures, if any, which the applicant could take to cause the recommendation to be changed;

(ii) If the recommendation is to issue the permit, the final EIS shall recommend the actions which the permittee should take to prevent or minimize any adverse environmental impacts;

(3) The Regional Administrator shall issue or deny the new source NPDES permit following a complete evaluation of any significant beneficial and adverse environmental impacts and a review of the recommendations contained in the EIS.

(4)(i) No on-site construction of a new source for which an EIS is required shall commence before issuance of a final permit incorporating appropriate EIS-related requirements, or before execution by the applicant of a legally binding written agreement which requires compliance with all such requirements, unless such construction is determined by the Regional Administrator not to cause significant adverse environmental impact.

(ii) No on-site construction of a new source for which no EIS is required shall commence before 15 days following issuance of a finding of no significant impact, unless the new source requests permission to construct and the Regional Administrator determines that a finding of no significant impact will probably be made.

(5) The permit applicant must notify the Regional Administrator of any on-site construction which begins before the times specified in paragraph (c)(4) of this section. If on-site construction begins in violation of this paragraph, the Regional Administrator shall advise the owner or operator that it is proceeding with construction at its own risk, and that such construction activities constitute grounds for denial of a permit. The Regional Administrator may seek a court order to enjoin construction in violation of this paragraph.

(d) *Effect of compliance with new source performance standards.* (1) Except as provided in paragraph (d)(2), any new discharger on which construction commenced after October 18, 1972, or any new source, which meets the applicable promulgated new source performance standards before the commencement of discharge, shall not be subject to any more stringent new source performance standards, or to any more stringent technology-based standards under section 301(b)(2) of the Act for the shortest of the following periods:

(i) Ten years from the date that construction is completed;

(ii) Ten years from the date the source begins to discharge process or other non-construction related wastewater; or

(iii) The period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954.

[*Comment:* The provisions of this paragraph do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources nor new dischargers or otherwise do not meet the requirements of this paragraph.]

(2) The protection from more stringent standards of performance afforded by paragraph (d)(1) of this section does not apply to:

(i) Additional or more stringent permit conditions which are not technology based, e.g., conditions based on water quality standards, or effluent standards or prohibitions under section 307(a); and

(ii) Additional permit conditions controlling pollutants listed as toxic under section 307(a) of the Act or as hazardous substances under section 311 of the act and which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic or hazardous where control of those other pollutants has been specifically identified as the method to control the toxic or hazardous pollutant.

(3) Where an NPDES permit issued to a source enjoying a "protection period" under paragraph (d)(1), will expire on or before the expiration of the protection period, such permit shall require the owner or operator of the source to be in compliance with the requirements of section 301 and any other than applicable requirements of the act immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements shall be allowed.

(4) The owner or operator of a new source, a new discharger, a source recommencing discharge after terminating operations, or a source which had been an indirect discharger which commences discharging into navigable waters shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the terms and conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit terms and conditions.

(5) After the effective date of new source performance standards, in accordance with section 306(e), it shall be unlawful for any owner or operator of any new source to operate such source in violation of those standards applicable to such source.

**§ 122.48 General permit program.**

(a) *Definitions.* (1) The term "separate storm sewer" is defined in § 122.45.

(2) The term "general permit program area" ("GPPA") means any area so designated under paragraph (c) of this section in which all owners or operators of separate storm sewers or other categories of point sources are subject to the same general permit, other than owners or operators of such sources to whom individual NPDES permits have been issued.

[*Comment:* All draft general permits for point sources other than separate storm sewers must be sent to the EPA Deputy Assistant Administrator for Water Enforcement during the public comment period for a 90-day review. If the draft general permit does not meet the criteria of § 122.48(b)(2), the EPA Deputy Assistant Administrator may object to the issuance of the general permit within those 90 days. See § 123.12(a)(14) and 124.32(a)(2).]

(3) The term "general permit" means an authorization to discharge which,

(i) Where issued by EPA, is published in the **Federal Register** or,

(ii) Where issued by a State, published in accordance with applicable State procedures, and

(iii) Is applicable to all owners and operators of separate storm sewers or other categories of point sources in a designated GPPA, other than owners and operators of such sources to whom individual NPDES permits have been issued.

(b) The Director may regulate the following discharges under general permits:

(1) Separate storm sewers; and

(2) Such other categories of point sources if there are a number of minor point sources operating in a geographical area that:

(i) Involve the same or substantially similar types of operations;

(ii) Discharge the same types of wastes;

(iii) Would require the same effluent limitations or operating conditions;

(iv) Would require the same similar monitoring requirements; and

(v) In the opinion of the director, would be more appropriately controlled under a general permit than under an individual NPDES permit.

(c) Each general permit shall be applicable to a class or category of dischargers meeting the criteria of paragraph (b) within a GPPA designated by the Director.

(1) The GPPA shall correspond with existing geographic or political boundaries such as:

(i) Designated planning areas under sections 208 and 303 of the Act;

(ii) Sewer districts or sewer authorities;

(iii) City, county or State political boundaries;

(iv) State highway systems;

(v) Standard metropolitan statistical areas as defined by the Office of Management and Budget;

(vi) Urbanized areas as defined by the Bureau of Census (see § 122.45(b)(1)); or

(vii) Any other appropriate divisions or combinations of the above boundaries which will encompass the sources subject to the same general permit.

(2) Any designation of any GPPA is subject to review by the Director at the expiration of the general permit for the GPPA, or if individual permits have been issued to all the owners and operators in the categories of point sources within the GPPA, or as necessary to address water quality problems effectively.

(3) General permits shall be issued in accordance with the applicable requirements of Part 124.

[*Comment:* The permit issuing authority is encouraged to provide as much actual notice of the draft general permit to the permitees as possible. This notice would be in addition to the public notice requirements in § 124.41(f) and could include notice in trade association journals and newsletters.]

(d) *Scope of General Permits.* (1) Each general permit shall cover all owners and operators of separate storm sewers or other designated categories of point sources in the GPPA for which the general permit is issued, except:

(i) As provided in paragraph (e); and

(ii) Owners and operators of separate storm sewers or other categories of point sources, who are already subject to individual NPDES permits prior to the effective date of the general permit;

(2)(i) All sources not excluded from general permit coverage for these reasons are permittees subject to the terms and conditions of the general permit.

(ii) Source excluded from general permit coverage solely because they already have an individual NPDES permit may request that the individual permit be revoked, and that they be covered by the general permit. Upon revocation of the individual NPDES permit, the general permit shall apply to such point source.

(e) *Case-by-case designation.* (1) Under § 124.14, the Director may revoke a general permit as it applies to any

person and require such person to apply for and obtain an individual NPDES permit. Interested persons may petition the Director to take action under this paragraph if one of the six cases listed below occurs. Cases where individual NPDES permits may be required include the following:

(i) The covered discharge(s) is a significant contributor of pollution;

(ii) The discharger is not in compliance with the terms and conditions of the general permit;

(iii) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants from the covered point source;

(iv) Effluent limitations guidelines are subsequently promulgated for point sources covered by the general permit;

(v) A Water Quality Management plan containing requirements applicable to such point source is approved; or

(vi) The requirements of paragraph (b)(2)(i) through (iv) are not met.

(2) Where EPA is the permit issuing authority, the Regional Administrator may revoke a general permit as it applies to any person and require such person to apply for an individual NPDES permit if:

(i) There has been an on-site inspection of the facility and a determination that the point source should and could be regulated under an individual permit; and

(ii) The owner or operator has been notified in writing of the revocation of the general permit and that a permit application is required. This notice shall include an application form, a statement that the owner or operator has sixty days from receipt of notice to file the application, and a statement that the general permit no longer authorizes the owner or operator to discharge pollutants.

(3) Any owner or operator subject to a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit such application, with reasons supporting the request, to the Director no later than ninety days after the publication by EPA of the general permit in the **Federal Register** or the publication by the State in accordance with applicable State law. All such requests shall be granted by issuance of any individual permit if the reasons cited by the owner or operator are adequate to support the request.

(4) Where an individual NPDES permit is issued to an owner or operator otherwise subject to a general permit, the general permit as it applies to the individual NPDES permittee is automatically revoked on the effective date of the individual permit.

(5) Any owner or operator applying for an individual NPDES permit under this paragraph is subject to the procedures set forth in Part 124.

**§ 122.49 Special considerations under Federal law.**

Under section 301(b)(1)(C) of the Act, permits shall be consistent with and reflect requirements under applicable Federal laws other than the Act, and to the extent authorized by law, requirements under Executive Orders. For permits issued by the Regional Administrators, such Federal requirements include but are not limited to the following:

(a) Executive order 11990 (Protection of Wetlands).

(b) Executive Order 11988 (Preservation of Floodplains).

(c) Sections 3, 4, and 5 of the Wild and Scenic Rivers Act, 16 U.S.C. 1273 et seq.

(d) The National Historic Preservation Act of 1966, 42 U.S.C. 4321 et seq. (and the related Executive Order 11593).

(e) The Land and Water Conservation Act, 16 U.S.C. 460, et seq.

(f) Section 7 of the endangered Species Act, 16 U.S.C. 1531 et seq.

(g) Section 307 of the Coastal Zone Management Act, 16 U.S.C. 1451 et seq.

[*Comment:* NPDES permits must be consistent with approved coastal zone management plans by virtue of sections 307(c)(3)(A) (Federally issued permits) and 307(c)(1) (approval and oversight of State permit programs).]

(h) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.

(i) The Safe Drinking Water Act, 42 U.S.C. 300f et seq.

(j) The Marine Protection, Research, and Sanctuaries Act (the Ocean Dumping Act), 33 U.S.C. 1401 et seq.

(k) The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.

(l) The Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq.

## Subpart F—Miscellaneous

**§ 122.60 Delegation of authority.**

Subject to the appeal provisions of Part 124, the following authorities are hereby delegated to each of the Regional Administrators for the Region in which they are located:

(a) The authority to issue, condition, revoke, modify, deny, monitor, and enforce permits for discharges regulated by the NPDES program under sections 318, 402 and 405 of the Act.

(b) The authority to receive permit applications and related documents from States and to object in writing to the issuance of permits under section 402(d)(2) of the Act or (if such permits are outside the guidelines and requirements of the Act) under sections 402(d) (1), (2) and (4) of the Act.

(c) The authority under section 403(c) of the Act to issue permits under section 402 of the Act for a discharge into the territorial sea, the contiguous zone, or the oceans before the promulgation of guidelines under section 403(c) of the Act, including the determination that issuance is in the public interest.

(d) The authority granted to the Administrator by sections 308(a) and 308(b) of the Act.

(e) The authority to grant variances granted to the Administrator under sections 301(c), 301(g), and 316(a) of the Act.

(f) The authority to grant time extensions of statutory compliance dates under sections 301(i) and 301(k) of the Act.

(g) The authority to establish water-quality-related effluent limitations under section 302 of the Act.

(h) These authorities may be redelegated to the Enforcement Division Director of each Region. Permit issuance authority may not be redelegated below the Enforcement Division Director.

**Appendix A—Point Source Categories and Permit Expiration Dates**

| Point source category | Permit expiration dates |
|---|---|
| Adhesives | June 30, 1981. |
| Aluminum Forming | June 30, 1981. |
| Auto & Other Laundries | June 30, 1981. |
| Battery Manufacturing | June 30, 1981. |
| Coal Mining | December 31, 1980. |
| Coil Coating | June 30, 1981. |
| Copper Forming | June 30, 1981. |
| Electric & Electronic Components | June 30, 1981. |
| Electroplating | June 30, 1981. |
| Explosives Manufacturing | June 30, 1981. |
| Foundries | June 30, 1981. |
| Gum & Wood Chemicals | June 30, 1981. |
| Inorganic Chemicals | March 31, 1981. |
| Iron & Steel | September 30, 1980. |
| Leather Tanning and Finishing | September 30, 1980. |
| Mechanical Products | June 30, 1981. |
| Nonferrous Metals | December 31, 1980. |
| Ore Mining | December 31, 1980. |
| Organic Chemicals | March 31, 1981. |
| Paint & Ink | December 31, 1980. |
| Pesticides | June 30, 1981. |
| Petroleum Refining | September 30, 1980. |
| Pharmaceuticals | June 30, 1981. |
| Photographic Supplies | June 30, 1981. |
| Plastics Processing | June 30, 1981. |
| Plastic & Synthetic materials | March 31, 1981. |
| Porcelain Enamel | June 30, 1981. |
| Printing & Publishing | December 31, 1980. |
| Pulp & Paper | March 31, 1981. |
| Rubber | March 31, 1981. |
| Soaps & Detergents | June 30, 1981. |
| Steam Electric | September 30, 1980. |
| Textile Mills | March 31, 1981. |
| Timber | September 30, 1980. |

5. A new Part 123 is added as follows:

## PART 123—STATE PERMIT PROGRAM REQUIREMENTS

### Subpart A—General

Sec.
123.1 Purpose and scope.
123.2 Definitions.
123.3 Elements of a program submission.
123.4 Program description.
123.5 Memorandum of Agreement with the Secretary for section 404 programs.
123.6 Attorney General's Statement.
123.7 Memorandum of Agreement with the Regional Administrator.
123.8 Sharing of information.

### Subpart B—Requirements of State Programs

123.11 Requirement to obtain a permit.
123.12 Operational requirements.
123.13 Control of disposal of pollutants into wells.
123.14 Inspections, monitoring, entry, and reporting.

### Subpart C—Transfer of Information, Objections to Permits

123.21 Receipt and use of Federal information.
123.22 Transmission of information to EPA.
123.23 Objections to proposed NPDES permits.
123.24 Prohibitions.

### Subpart D—Enforcement Provisions

123.31 Compliance evaluation programs.
123.32 Enforcement.

### Subpart E—Planning and Conflict of Interest Requirements

123.41 Continuing planning process.
123.42 Agency board membership.

### Subpart F—Procedures for Approval of State Permit Programs

123.51 Section 402 approval process.
123.52 Section 404 approval process.

### Subpart G—Revisions to Approved Programs

123.61 Procedure for revision of State permit programs.
123.62 NPDES program revisions under the Clean Water Act of 1977.

**Authority:** Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq.

## Subpart A—General

### § 123.1 Purpose and scope.

(a)(1) This Part specifies the requirements of State section 404 (discharges of dredged or fill material) and NPDES (sections 318, 402, and 405) permit programs which must be met in order to obtain approval of the Administrator under the Clean Water Act.

(2) This Part also specifies the process for approving and modifying State programs and for EPA objection to proposed State permits.

(b) A State permit program which conforms to this Part shall be approved by the Administrator. A State permit program will not be approved by the Administrator under section 402 of the Act unless it has authority to control the discharges specified in sections 318 and 405(a) of the Act. Except as provided below, State section 402 permit programs approved by EPA prior to the date of promulgation of these regulations may implement sections 318 and 405 of the Act. If a State lacks authority to implement these sections, it shall notify EPA and revise its program in accordance with § 123.62. Permit programs under sections 318 and 405 will not be approved independent of a section 402 permit program.

(c) Upon approval (and upon subsequent notification from the State that it is administering the permit program for purposes of section 404), the Administrator or the Secretary (in the case of section 404 programs), shall suspend the issuance of permits for those activities subject to the approved program.

(d) After program approval EPA or the Secretary (in the case of section 404 programs) shall retain jurisdiction over any permits (including general permits) which have been issued by the Federal government unless arrangements have been made with the State in the Memorandum of Agreement for the State to assume responsibility for these permits. Retention of jurisdiction shall include the processing of any permit appeals, modification requests or variance requests; the conduct of inspections, and the receipt and review of self-monitoring reports. If any permit appeal, modification request or variance request is not finally resolved when the Federally issued permit expires, EPA or the Secretary (in the case of section 404 programs) when agreed to by the State, may continue to retain jurisdiction until the matter is resolved. Under section 404(h)(5) of the Act States are entitled, after program approval, to administer and enforce general permits issued by the Secretary. However, if the State chooses not to administer and enforce these permits the Secretary retains jurisdiction until they expire.

(e) Any State permit program approved by the Administrator shall at all times be conducted in accordance with the requirements of this Part (including, where incorporated by reference, provisions of Parts 122, 124, and 125).

(f) These regulations are promulgated under the authority of sections 304(i), 101(e) and 501(a) of the Act, and implement the requirements of those sections.

[*Comment:* No partial program approvals may be granted. States must have authority to issue permits for all discharges into all waters of the United States within the State's jurisdiction. (In appropriate circumstances more than one State Agency can be approved to issue NPDES permits; see § 123.4(b).) In addition, States (including States which have previously been approved) must implement the Clean Water Act of 1977, (Pub. L. 95–217), amendments to sections 313 (Federal facilities); 304(e) (best management practices); and 402(b)(8) (pretreatment) of the Act. Similarly, all the requirements of section 404 must be satisfied prior to approval of a State section 404 program. The section 404 and NPDES programs are independent; a State may obtain approval for one without the other.

Although these regulations require States to administer complete programs, EPA recognizes that, as a matter of Federal law, a State may lack authority to exercise jurisdiction over discharges from facilities on Indian lands. The lack of such authority does not constitute grounds for refusal to authorize State administration of a program. However, to the extent that States have authority to exercise jurisdiction, they are required to do so.]

(g) Nothing in this Part precludes a State from:

(1) Adopting or enforcing any standard, limitation, or other requirement which is more stringent than required under the Act; or

(2) Operating a permit program with a greater scope of coverage than required under the Act.

(h) A State permit program approved under this Part is established and operated under State law.

[*Comment:* EPA has a continuing statutory responsibility to assure that the operation of State programs in in accordance with Federal law. States must cooperate with EPA and assure that it has access to information which it requests in order to carry out this responsibility. See §§ 123.8 and 123.61(d).]

### § 123.2 Definitions.

(a) The definitions in Part 122 apply to this Part.

(b) "Draft permit" means the permit prepared pursuant to §§ 124.31 or 124.32 indicating the State Director's tentative determination to issue or modify a permit with specified conditions.

(c) "Proposed permit" means a state permit or permit modification prepared after the public comment period (and, where applicable, any public hearing) which is sent to EPA for review before final issuance by the State. In the case of section 404 programs, proposed permits are not required unless requested by EPA.

[*Comment:* Where EPA has waived permit review no proposed permit is required under these regulations. The State may issue a final permit after meeting the requirements of §§ 124.31, 124.41, 124.42 and 124.44.]

(d) "Memorandum of Agreement" means the agreement entered into pursuant to § 123.7 between the Regional Administrator and the State Director, governing the relationship, duties, and rights of the parties in operating a State NPDES program.

(e) "State/EPA Agreement" means an agreement between the Regional Administrator and the State which integrates and coordinates EPA and State activities, responsibilities and programs under the Clean Water Act, the Resource Conservation and Recovery Act, and the Safe Drinking Water Act. The scope of the State/EPA Agreement may be expanded in the future to cover other environmental programs. Guidance for these agreements will be published from time to time in the **Federal Register** (see, e.g., 44 FR 17294 March 21, 1979).

**§ 123.3 Elements of a program submission.**

(a) EPA will not initiate formal review of a proposed State program until it receives three copies of a complete program submission. If a submission made by a State is not complete, the statutory review period (i.e., the period of time allotted for EPA review under the Act) shall not commence until the deficiency is corrected. The submission shall contain the following elements:

(1) A letter from the Governor of the State requesting program approval;

(2) An Attorney General's Statement as required by § 123.6;

(3) A Memorandum of Agreement as required by § 123.7;

(4) A complete program description as required by § 123.4;

(5) Copies of the permit application and permit forms which the State intends to employ in its program. Except for Discharge Monitoring Reports, forms used by States need not be identical to the forms used by EPA or the Secretary but should require the same basic information. The State need not provide copies of uniform national forms it intends to use but should note that it intends to use these:

[*Comment:* The States are encouraged to use uniform national forms established by the Administrator in the case of NPDES, or the Secretary in the case of section 404 programs. States are required to use uniform national Discharge Monitoring Reports, see § 122.31(1). Regulations will be proposed in the near future specifying information required on State NPDES and section 404 application forms. Uniform national forms may be modified to substitute the State Agency's name, address, logo, and other similar information, as appropriate, in place of EPA's.]

(6) Copies of all applicable statutes and regulations, including those governing applicable State administrative procedures; and

(7) In the case of section 404 programs, a Memorandum of Agreement between the State and the Secretary as required by § 123.5.

(b) If the State's submission is materially changed during the statutory review period, the review period shall recommence.

**§ 123.4 Program description.**

Any State desiring to administer a permit program shall submit to the Administrator a complete description of the program it proposes to establish and administer under State law or under an interstate compact. The program description shall include:

(a) A description of how the State intends to carry out its responsibilities under the Act.

(b)(1) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the permit program. NPDES authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities. Where more than one agency is responsible for issuing permits, each agency must make a submission meeting the requirements of § 123.3 before formal EPA review will commence. In the case of section 404 programs, the State must designate one agency to be responsible for issuing section 404 permits.

(2) In the case of section 404 programs, the program description shall describe how the State section 404 agency will interact with other State and local agencies.

[*Comment:* There is no restriction limiting the number and type of state agencies implementing the NPDES program. However, EPA favors the use of a single agency.]

(c) A description of State procedures for the issuance of permits (including general permits if the State chooses to implement § 122.48), and any State appellate review procedures.

(d) A description of the State's priorities for issuance of permits.

(e) A description of the State's priorities for enforcement of permits, including a complete description of the State's compliance tracking and enforcement programs. In addition, in the case of section 404 programs the State must explain how it will coordinate its enforcement strategy with that of the Corps of Engineers and EPA.

(f) A description of the funding arrangements and personnel qualifications for the State's program, including the following information:

(1) A description of the agency staff who will be engaged in carrying out the State program, including the number and occupations of the employees;

(2) A list of the proposed or actual costs of establishing and administering the program, including the cost of the personnel listed in paragraph (f)(1) of this section, the cost of administrative support, and the cost of technical support;

(3) A description of the funding, including Federal grant money, available to the State Director to meet the costs listed in paragraph (f)(2) of this section, including any restriction or limitation upon this funding. Where the State proposes to administer a program of greater scope than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the federally required portion of the program; and

(4) For section 404 programs, a description of the categories and sizes of dicharges of dredged or fill material to which the State Director proposes to issue permits. For each category, the following information shall be given:

(i) Estimated number within the category which must file for a permit; and

(ii) Number and percent within each category for which the State has already issued a State permit or equivalent document regulating the discharge.

(g) In the case of section 404 programs, a description of the specific best management practices requirements proposed to be used to satisfy the exemption provisions of section 404(f)(1)(E) for construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment in accordance with applicable regulations.

[*Comment:* Regulations governing these BMPs will be proposed in the near future.]

**§ 123.5 Memorandum of Agreement with the Secretary for section 404 programs.**

In the case of section 404 programs the State shall enter into a Memorandum of Agreement with the Secretary, which shall include:

(a) An identification of those waters in which the Secretary will suspend the issuance of section 404 permits (pursuant to section 404 (h)(2) and (g)(1))

upon approval of the State program by the Administrator;

(b) Where an agreement is reached, procedures for joint processing of permits for activities which require both a section 404 permit from the State and a section 9 or 10 permit from the Secretary under the River and Harbor Act of 1899.

(c) An identification of those individual and general permits, if any, issued by the Secretary, the terms and conditions of which the State intends to administer and enforce (including inspection, monitoring, and surveillance responsibilities) upon receiving approval of its program, and a plan for transferring these permits to the State.

[*Comment:* See *Comment* to § 123.7(b)(1).]

(d) Procedures whereby the Secretary will transfer to the State pending section 404 permit applications and other relevant information, as specified in § 123.21.

(e) Assurance that the State will not issue any section 404 permit for a discharge which, in the judgment of the Secretary after consultation with the Secretary of the Department in which the Coast Guard is operating, would substantially impair anchorage or navigation.

(f) Those "classes or categories" if any, of proposed State permits for which the Secretary waives the right to review.

(g) Other matters not inconsistent with this Part that the Secretary and the State deem appropriate.

[*Comment:* States that regulate the discharge of dredged or fill material into those traditionally navigable waters which, by virtue of section 404(g)(1), will also require a section 404 permit from the Secretary after State program approval, are strongly encouraged to establish in this Memorandum of Agreement procedures for joint processing of permits, including joint public notices and public hearings.]

**§ 123.6 Attorney General's Statement.**

(a) Any State desiring to administer a permit program shall submit a statement from the State Attorney General (or the attorney for those State agencies which have independent legal counsel), that the laws of the State, or the interstate compact, as the case may be, provide adequate authority to carry out the program described under § 123.4 and to meet the requirements of this Part. The Attorney General's Statement shall include citations to specific statutes, administrative regulations, and, where appropriate, judicial decisions to demonstrate adequate legal authority.

[*Comment:* To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State in court on all matters pertaining to the State program.]

(b) Where juridiction may be exercised over activities on Indian lands, the statement shall certify that the State has such authority.

(c) In the case of section 404 programs, in addition to certifying the authorities described in paragraph (a), the Attorney General's Statement shall also contain:

(1)An analysis of the State's law prohibiting the taking of private property without just compensation, including any applicable judicial interpretations, and assurance that this will not adversely affect the successful implementation of the State's regulation of the discharge of dredged or fill material; and

(2) A certification that the State has authority to prohibit, deny, restrict, or withdraw the specification of disposal sites for the discharge of dredged or fill material in any defined area of those waters for which the State receives section 404 authority, including:

(i) Authority to apply the criteria contained in 40 CFR Part 230;

(ii) Authority (similar to EPA's authority under section 404(c)) to prohibit the discharge of dredged or fill material into areas where such discharges would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife or recreational areas.

[*Comment:* The above authority to prohibit, deny, restrict, or withdraw the specification of disposal sites should not be limited to situations where an application for a 404 permit has been made, but should also include the authority to designate areas which will not be available for disposal site specification, as described in 40 CFR § 230.7(d). Nothing in subparagraph (c)(2)(ii) is intended to limit the Administrator's authority to take similar actions under section 404(c) of the Act.]

(d) The authorities cited by the State Attorney General or other legal officer as authority to meet the requirements of this Part shall be in the form of lawfully adopted State statutes or regulations which shall be in full force and effect at the time the statement is signed.

[*Comment:* This Part sets forth a number of procedural requirements. For example, § 123.22 requires approved States to transmit information to EPA and other agencies. Not all such procedural requirements need be embodied in State regulations. However, the State must show it has adequate authority to carry out all the requirements of this Part, and that no State statute or regulation is inconsistent with those requirements.]

**§ 123.7 Memorandum of Agreement with the regional administrator.**

(a) Before the Administrator approves any State NPDES or section 404 program, the State Director and the Regional Administrator shall execute a Memorandum of Agreement (MOA), which shall be approved by the Administrator not later than the time of program approval. In addition to including the requirements of paragraph (b), the Memorandum of Agreement may include other terms, conditions, or agreements relevant to the administration and enforcement of the State's regulatory program which are not inconsistent with this Part. No Memorandum of Agreement shall be approved which restricts EPA's statutory oversight responsibility. The Memorandum of Agreement shall be available for inspection and comment before the public hearing required by §§ 123.51 or 123.52.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions implementing § 123.21 for the prompt transfer of any pending permit applications or any other relevant information not already in the possession of the State Director. Where existing permits are transferred to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring responsibility for these permits. Where existing permits are not transferred, § 123.1(d) applies.

[*Comment:* In many instances States will lack the authority to directly administer permits issued by EPA. However, a procedure may be established to transfer responsibility for these permits. For example, a State could issue permits identical to the outstanding EPA permits which could be simultaneously revoked.]

(2) Provisions implementing §§ 123.22 and 123.23 specifying the basis and procedures for EPA to receive permits and permit applications from the State for review, comment, and objection. In the case of a State section 404 program the State shall assure that it will transmit copies of all proposed permits to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service at the same time such permits are transmitted to EPA, subject to the right of any of these agencies to waive, in whole or in part, the right to receive such permits.

(3)(i) In the case of section 402 programs, provisions specifying the extent to which EPA review of State-issued permits will be waived under sections 402(d)(3), (e) or (f) of the Act. While the Regional Administrator and

the State may agree to waive EPA review of certain "classes or categories" of permits, no waiver of review may be granted for the following discharges:

(A) Discharges into the territorial sea or contiguous zone;

(B) Discharges which may affect the waters of a State other than the one in which the discharge originates;

(C) Proposed NPDES general permits (see § 122.48);

(D) Discharges from publicly owned treatment works with a daily average discharge exceeding 1 million gallons per day;

(E) Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons per day;

(F) Discharges from any major discharger or from any discharger within any of the industrial categories listed in Appendix A to Part 122;

(G) Discharges from other sources with a daily average discharge exceeding 0.5 million gallons per day, except that EPA review of permits for discharges of non-process wastewater may be waived, regardless of flow, with the prior concurrence of the EPA Deputy Assistant Administrator for Water Enforcement;

(ii) In the case of section 404 programs, provisions specifying the extent to which EPA review of permit applications and State-issued permits will be waived under sections 404(k) or (l) of the Act. While the Regional Administrator and the State, in consultation with the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, may agree to waive Federal review of certain "classes or categories" of permits no waiver may be granted for the following activities:

(A) Discharges which may affect the waters of a State other than one from which the discharge originates;

(B) Discharges incidental to activities described in section 404(f)(2) of the Act (i.e., activities having as their purpose bringing an area of the waters of the United States into a new use, where the flow and circulation of waters may be impaired or their reach reduced);

(C) Proposed section 404 general permits; or

(D) Discharges known or suspected to contain toxic or hazardous pollutants in significant amounts.

(iii) Whenever a waiver is granted under paragraph (b)(3) (i) or (ii) of this section, a statement that the Regional Administrator retains the right to terminate the waiver, in whole or in part, at any time by sending the State Director written notice of termination. The waiver shall not affect the duty of the State to supply EPA with copies of all permit applications, public notices and final permits.

(4) Provisions, consistent with this Part, specifying the frequency and content of reports, documents and other information which the State must submit to EPA.

(5) Provisions on the State's enforcement program including:

(i) Provisions for compliance monitoring by the State and by EPA and for the coordination of these efforts. These provisions may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection;

(ii) Fiscal arrangements for effective litigation support for the State attorney general or other appropriate legal officers;

(iii) The establishment of an enforcement management system implementing the requirements of § 123.31.

(6) Where appropriate, provisions for joint processing of permits by the State and EPA.

[*Comment:* To promote efficiency and to avoid duplication and inconsistency, States are encouraged to enter into joint processing agreements with EPA for permit issuance. Likewise, States are encouraged to consolidate their own permit programs and activities.]

(7) Provisions for modification of the Memorandum of Agreement with the approval of the Administrator.

(c) The Memorandum of Agreement and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended in accordance with procedures set forth in this Part. The State/EPA Agreement may not override the Memorandum of Agreement.

[*Comment:* Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. Where this is the case, it may still be appropriate to specify in the MOA the basis for such detailed agreements, for example, a provision in the MOA specifying that EPA will select facilities in the State for inspection annually as part of the State/EPA Agreement.]

### § 123.8 Sharing of information.

(a) Any information obtained or used pursuant to a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must pass that claim on to EPA. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2. If EPA obtains information from a State that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA may furnish information to States in order to implement these regulations. In the case of information claimed as confidential by submitters, State access will be subject to the rules in 40 CFR Part 2, Subpart B.

## Subpart B—Requirements of State Programs

### § 123.11 Requirement to obtain a permit.

(a) State NPDES permit programs must have a statute or regulation, enforceable in State courts, which prohibits the discharge of pollutants by any person except as authorized by a permit in effect under the State program or under section 402 of the Act, except that States need not regulate discharges exempt from the Federal permit requirement under § 122.4.

(b) State section 404 permit programs must have a statute or regulation, enforceable in State courts, which prohibits the discharge of dredged or fill material into waters subject to the State's jurisdiction by any person except as authorized by a permit in effect under the State program or under section 404 of the Act, except that States need not regulate discharges exempt from the Federal permit requirement under section 404(r) or under the regulations implementing section 404(f)(1) of the Act.

[*Comment:* § 123.1(g) provides that States are not preempted from adopting more stringent standards or regulating more activities than the Act requires. For example, States may choose to regulate certain minor categories of discharges of dredged or fill material which have been exempted from the Federal program by section 404(f)(1) of the Act. Likewise, States are not precluded from regulating activities which, by virtue of section 404(g)(1) of the Act, also require a 404 permit from the Secretary. Although State permits in waters described in section 404(g)(1) are not section 404 permits, section 404(t) of the Act provides that a State is not preempted from requiring permits for discharges into these waters. It should be noted that the regulations of the Corps of Engineers encourage joint Corps-State processing of permits, including joint public notices and hearings (33 CFR § 320.4(j)). The Secretary attaches considerable weight to State determinations (33 CFR § 320.4(j)(1)–(7).]

**§ 123.12 Operational requirements.**

(a) State section 402 programs must have legal authority to implement each of the following provisions and must be administered in conformance with each of the following provisions:

(1) § 122.5—(Signatories);

(2) § 122.11(d)—(Permit issuance; effect of permit);

(3) §122.12(a), (c) and (d)—(Duration and transferability of permits);

(4) §122.13—(Prohibitions);

(5) §122.14—(Conditions applicable to all permits);

(6) §122.15—(Applicable limitations, standards, prohibitions and conditions);

(7) §122.16—(Calculation and specification of effluent limitations and standards);

(8) §122.17(a), (b), (d), (e) and (f)—(Schedules of compliance);

(9) §122.20—(Monitoring);

(10) §122.21—(Recording of monitoring results);

(11) §122.22—(Reporting of monitoring results);

(12) § 122.23—(Noncompliance reporting);

(13) § 122.31—(Modification, revocation and reissuance, and termination);

(14) Part 122, Subpart E except §§ 122.40, 122.47(a)–(c) and 122.49—(Special NPDES Programs)—*provided,* States are not required to implement the general permit program under § 122.48. If a State chooses to issue general permits such action is subject to the following conditions:

(i) Any general permit shall be issued in accordance with § 122.48;

(ii) Prior to, or at the time of proposal of any general permit, the State Attorney General (or other legal officer as appropriate, see § 123.6) shall certify that the State has adequate legal authority to issue and enforce general permits;

(iii) EPA shall have 90 days to review any proposed general permit; and

(iv) All general permits, except those for separate storm sewers, may be objected to on EPA's behalf by the EPA Deputy Assistant Administrator for Water Enforcement. The State shall transmit a copy of any such proposed general permit to the EPA Deputy Assistant Administrator for Water Enforcement at the same time the proposed permit is transmitted to the EPA Regional Office.

(15) § 124.13—(Modification requests);

(16) § 124.31(b)—(Draft permits);

(17) § 124.32(a)—(Other draft permits);

(18) § 124.33—(Statement of basis);

(19) § 124.34—(Fact sheet);

(20) § 124.41—(Public notices);

(21) § 124.42—(Public comments and hearing);

(22) § 124.44—(Comments from government agencies);

(23) § 124.51—(Time requirements for variances), *provided,* State programs are not required to provide for any or all of the variances listed in § 124.51;

(24) § 124.52—(Decision on variances);

(25) § 124.63(a)—(Response to comments);

(26) § 124.131(a)—(Public access);

(27) Subparts A, B, C, D, H, I, J, K and L of Part 125—(NPDES Determinations); and

(28) 40 CFR Parts 129, 133 and Subchapter N.

(b) States seeking approval of section 404 programs should consult with EPA on the operational aspects of their programs.

[*Comment:* Regulations governing the operational aspects of State section 404 programs will be proposed in the near future.]

**§ 123.13 Control of disposal of pollutants into wells.**

State section 402 permit programs must have authority to issue permits to control the disposal of pollutants into wells. Such authority shall enable the State Director to protect the public health and welfare and to prevent the pollution of ground and surface waters by prohibiting well discharges or by permitting them with appropriate permit terms and conditions.

[*Comment:* States which are authorized to administer the NPDES permit program under section 402 of the Act are encouraged to rely on existing statutory authority, to the extent possible, in developing a State underground injection control (UIC) program under section 1422 of the Safe Drinking Water Act. Section 402(b)(1)(D) of the Clean Water Act requires that NPDES States have the authority "to issue permits which . . . control the disposal of pollutants into wells." In many instances, therefore, NPDES States will have statutory authority to regulate well disposal which satisfies the requirements of the UIC program. However, the Clean Water Act excludes certain types of well injections from the definition of "pollutant." If the State's statutory authority contains a similar exclusion it may need to be modified to qualify for UIC program approval.]

**§ 123.14 Inspections, monitoring, entry, and reporting.**

Any State permit program shall provide adequate authority to inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of the Act.

**Subpart C—Transfer of Information, Objections To Permits**

**§ 123.21 Receipt and use of Federal information.**

Upon receiving EPA approval, the State agency administering a permit program shall be sent any relevant information which was collected by EPA or, where appropriate, the Secretary. The Memoranda of Agreement under §§ 123.5 and 123.7 shall provide for the following, in such manner as the State Director and the Regional Administrator or, where appropriate, the Secretary, shall agree:

(a) Prompt transmission to the State Director from the Regional Administrator or the Secretary of copies of any pending permit applications or any other relevant information collected before the approval of the State permit program and not already in the possession of the State Director. Where existing permits are transferred to the State Director (e.g., for purposes of compliance monitoring, enforcement, or reissuance), relevant information includes support files for permit issuance, compliance reports, and records of enforcement actions.

(b) Procedures to ensure that the State Director will not issue a permit on the basis of any application received from the Regional Administrator or the Secretary which the Regional Administrator or the Secretary identifies as incomplete or otherwise deficient until the State Director receives information sufficient to correct the deficiency.

**§ 123.22 Transmission of information to EPA.**

(a) Each State agency administering a permit program shall transmit to the Regional Administrator (and in the case of section 404 programs, to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service), copies of permit program forms and any other relevant information to the extent and in the manner agreed to by the Director and the Regional Administrator in the Memorandum of Agreement and not inconsistent with this Part. EPA review of proposed NPDES general permits is governed by § 123.12(a)(14). The Memorandum of Agreement shall provide for the following:

(1) Prompt transmission to the Regional Administrator of a copy of any complete permit applications received by the State Director.

(2) Prompt transmission to the Regional Administrator and any affected State of notice of every action

taken by the State agency related to the consideration of any permit application, including a copy of each proposed or draft permit and any terms, conditions, requirements, or documents which are related to the proposed or draft permit or which affect the authorization of the proposed permit. In the case of section 404 programs, the above shall be transmitted to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service at the same time they are transmitted to EPA. The State program shall provide:

(i) A period of time (up to 90 days) in which the Regional Administrator, or where appropriate, the EPA Deputy Assistant Administrator for Water Enforcement (see § 123.12(a)(14)), may comment upon, object to, or make recommendations with respect to the proposed permit and, in the case of section 404 programs, on the permit application. A copy of any comment, objection, or recommendation shall be sent to the permit applicant by EPA. In the case of NPDES general permits, EPA shall have 90 days to comment upon, object to, or make recommendations with respect to the proposed permit.

(ii) In the case of a draft or proposed permit which includes a tentative determination to approve a variance request which may only be authorized by EPA (see § 124.52(b)), formal EPA review of the permit shall not begin under this section and § 123.23 until EPA rules on the variance request.

[*Comment:* Normally EPA review time is substantially less than 90 days. However, EPA reserves the right to take a full 90 days to supply specific grounds for objection where a general objection is filed within the review period of the Memorandum of Agreement. In making comments, objections or recommendations on proposed State section 404 permits, the Regional Administrator will consider any timely written comments submitted to him by the Secretary, the U.S. Fish and Wildlife Service or the National Marine Fisheries Service.]

(3) Transmission to the Regional Administrator of a copy of every issued permit following issuance, along with any and all terms, conditions, requirements, or documents which are related to or affect the authorization of the permit.

(b) In the case of NPDES programs, transmission by the State Director to EPA of:

(1) Notices from publicly owned treatment works under § 122.15(d) and 40 CFR Part 403, upon request of the Regional Administrator;

(2) A copy of any significant comments presented in writing pursuant to the public notice and the response to comments prepared pursuant to § 124.63(a) if:

(i) The Regional Administrator requests this information; or

(ii) The proposed permit contains requirements significantly different from those contained in the tentative determination and draft permit; or

(iii) Significant comments adverse to the tentative determination and draft permit have been presented at the hearing or in writing pursuant to the public notice; and

(3) A quarterly noncompliance report in accordance with § 122.23.

(c) Within the time period agreed upon in the Memorandum of Agreement (or 90 days in the case of proposed NPDES general permits), the Regional Administrator (or, where appropriate, the EPA Deputy Assistant Administrator for Water Enforcement), pursuant to the right to object provided in the Act and § 123.23, may comment upon, object to, or make recommendations with respect to any proposed permit. In the case of section 404 programs, the Regional Administrator shall notify the State Director of his or her intent to comment upon or object to a proposed permit within 30 days of receipt.

(d) The Regional Administrator may, by agreement with the State Director in the Memorandum of Agreement (see § 123.7(b)(3)), waive the right to review, object to, or comment upon permit applications and proposed permits for classes, types, or sizes of discharges within any category of point sources, including the right to receive information under paragraphs (a)(2) and (b)(2) of this section.

(e) Any State section 404 permit program shall provide for transmission by the State Director to the Regional Administrator of the quarterly and annual reports on the permit program, in accordance with applicable regulations.

[*Comment:* Regulations governing reporting requirements for State section 404 programs will be proposed in the near future.]

(f) Any State permit program shall keep such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of this Part.

**§ 123.23 Objections to proposed NPDES permits.**

(a)(1) Within the period of time provided under the Memorandum of Agreement, the Regional Administrator shall notify the State Director of any objection to issuance of a proposed permit (except as provided in paragraph (a)(2) of this section for proposed general permits). This notification shall set forth in writing the general nature of the objection.

(2) Within 90 days following receipt of the proposed permit which has been objected to under subparagraph (a)(1) of this section, or in the case of general permits, within 90 days after the receipt of the proposed general permit, the Regional Administrator, or, in the case of general permits other than for separate storm sewers, the EPA Deputy Assistant Administrator for Water Enforcement shall set forth in writing and transmit to the State Director:

(i) A statement of the reasons for the objection (including the section of the Act or regulations that support the objection), and

(ii) The actions that must be taken by the State Director in order to eliminate the objection (including the effluent limitations and conditions which the permit would include if it were issued by EPA).

[*Comment:* This paragraph, in effect, modifies any existing agreement between EPA and the State which provides less than 90 days for EPA to supply the specific grounds for an objection. However, where an agreement provides for an EPA review period of less than 90 days EPA must file a general objection, in accordance with paragraph (a)(1) within the time specified in the agreement. This general objection will be followed by a specific objection within the 90-day statutory period. This modification to the MOA's is necessary for EPA review of general permits and since the Clean Water Act of 1977 now requires EPA to provide detailed information concerning acceptable permit terms and conditions. To avoid possible confusion, MOA's should be changed to reflect this.]

(b) The Regional Administrator may object to the issuance of a proposed permit as being outside the guidelines and requirements of the Act. This objection must be based upon one or more of the following grounds:

(1) The permit fails to apply, or to ensure compliance with, any applicable requirement of this Part;

[*Comment:* Under the provisions of this section, a permit not requiring the achievement of required effluent limitations by applicable statutory deadlines shall be subject to objection by the Regional Administrator.]

(2) In the case of any proposed permit for which notification is required under section 402(b)(5) of the Act, the written recommendations of an affected State have not been accepted by the permitting State and the Regional Administrator finds the reasons for rejecting the recommendations are inadequate;

(3) The procedures followed in connection with formulation of the proposed permit failed in a material respect to comply with procedures required by the Act, or by regulations thereunder or by the Memorandum of Agreement;

(4) Any finding made by the State Director in connection with the proposed permit misinterprets the Act or any guidelines or regulations under the Act, or misapplies them to the facts;

(5) Any provisions of the proposed permit relating to the maintenance of records, reporting, monitoring, sampling, or the provision of any other information by the permittee are inadequate, in the judgment of the Regional Administrator, to assure compliance with permit conditions, including effluent standards and limitations required by the Act, by the guidelines and regulations issued under the Act, or by the proposed permit;

(6) In the case of any proposed permit with respect to which applicable standards and limitations under sections 301, 304, 306, 307, 318, 403 and 405 of the Act have not yet been promulgated by the Agency, the proposed permit, in the judgment of the Regional Administrator, fails to carry out the provisions of the Act or of any regulations issued under the Act;

[*Comment:* The provisions of this paragraph apply to determinations made pursuant to § 125.3(c)(2) in the absence of applicable guidelines and to best management practices under section 304(e) of the Act, which must be incorporated into permits as requirements under sections 301, 306, 307, 318, 403, or 405 as the case may be.]

(7) Issuance of the proposed permit would in any other respect be outside the requirements of the Act, or regulations issued under the Act.

(c) Prior to notifying the State Director of an objection based upon any of the grounds set forth in paragraph (b) of this section, the Regional Administrator:

(1) Shall consider all data transmitted pursuant to § 123.22;

(2) May, if the information provided is inadequate to determine whether the proposed permit meets the guidelines and requirements of the Act, request the State Director to transmit to the Regional Administrator the complete record of the permit proceedings before the State, or any portions of the record that the Regional Administrator determines are necessary for review. If this request is made within 30 days of receipt of the State submittal under § 123.22, it shall constitute an interim objection to the issuance of the permit, and the full period of time specified in the Memorandum of Agreement for the Regional Administrator's review shall recommence when the Regional Administrator has received such record or portions; and

(3) May, in his or her discretion and to the extent feasible within the period of time available under the Memorandum of Agreement, afford to every interested person an opportunity to comment on the basis for an objection.

(d) Within 90 days of receipt by the State Director of an objection by the Regional Administrator, the State or any interested person may request that a public hearing be held by the Regional Administrator on the objection. Following a request, the Regional Administrator may provide public notice and hold a public hearing in accordance with the procedures of §§ 124.41 and 124.42 if warranted by significant public interest. A hearing shall be held whenever requested by the State which proposed the permit.

(e) A public hearing held under paragraph (d) shall be conducted by an EPA panel in an orderly and expeditious manner. Members of this panel shall include the Regional Administrator, the Assistant Administrator for Enforcement, the General Counsel, or their respective representatives.

(f) At the conclusion of the public hearing the Regional Administrator shall reaffirm the original objection, modify the terms of the objection, or withdraw the objection, and shall notify the State of this decision.

(g) Where the Regional Administrator has objected to a proposed permit under this section, he or she may issue the permit in accordance with Parts 121, 122 and 124 and any other guidelines and requirements of the Act in the following circumstances:

(1) If no public hearing is held under paragraph (d) and the State does not resubmit a permit revised to meet the Regional Administrator's objection within 90 days of receipt of the objection; or

(2) If a public hearing is held under paragraph (d) and the State does not resubmit a permit revised to meet the Regional Administrator's objection or modified objection within 30 days of the date of the Regional Administrator's notification under paragraph (f) of this section.

[*Comment:* Where the time set out in this paragraph expires without acceptable State action, exclusive authority to issue the permit passes to EPA.]

(h) In the case of proposed general permits for discharges other than from separate storm sewers substitute "EPA Deputy Assistant Administrator for Water Enforcement" for "Regional Administrator" whenever it appears in paragraphs (b), (c), (d), (f) and (g).

### § 123.24 Prohibitions.

Any State permit program shall provide that no permit shall be issued when EPA has objected in writing under section 402(d) or section 404(j) of the Act, whichever is applicable, and in the case of section 404 programs, in any defined area as to which the administrator has made a determination to prohibit or withdraw specification for disposal under section 404(c) of the act. In addition, no permit shall be issued if objected to by the Secretary pursuant to sections 402(b)(6) or 404(h)(1)(F) of the Act.

## Subpart D—Enforcement Provisions

### § 123.31 Compliance evaluation programs.

(a) Any State program shall have procedures for receipt, evaluation, and investigation for possible enforcement action of all notices and reports required of permittees (or failure to submit such notices and reports).

(b) Any State section 402 permit program shall have procedures and ability for:

(1) The maintenance of a comprehensive inventory of all sources covered by NPDES permits and a forecast of all reporting requirements to the agency. Any compilation, index or inventory of such sources shall be made available to the Regional Administrator upon request;

(2) Initial screening (i.e., pre-enforcement evaluation) of all permit or grant-related compliance information to identify violations and to establish the priority for further substantive technical evaluation;

(3) Following the initial screening, a substantive technical evaluation, where warranted, of all permit or grant-related compliance information to determine the appropriate agency response;

(4) The maintenance of a management information system which supports and guides the activities of this paragraph and paragraph (c).

(c) Any State program shall have inspection and surveillance procedures to determine, independent of information supplied by dischargers, compliance or noncompliance with applicable program requirements, standards and limitations, filing requirements and permit terms or conditions, including the following:

(1) A program which is capable of surveying State waters to identify dischargers subject to regulation who have failed to apply for permits;

(2) A program for periodic inspections of the activities subject to regulation. The facilities of major dischargers (for a discussion of "major discharger", see *Comment* to § 122.23) shall be inspected at least annually. These inspections shall:

(i) Determine compliance or noncompliance with issued permit terms and conditions and other program requirements, and, in particular, compliance or noncompliance with specific standards and limitations, operation and maintenance requirements, and schedules of compliance;

(ii) Verify the accuracy of information submitted by permittees in reporting forms and other forms supplying monitoring data;

(iii) Verify the adequacy of sampling, monitoring and other methods used by permittees to develop that information; and

(3) A program for investigating evidence of violations of applicable program requirements, standards and limitations, filing requirements, or permit terms and conditions indicated by reports and notifications evaluated under paragraph (b) or by the survey, inspection, and surveillance activities in paragraphs (c) (1) and (2) of this section. This program shall include procedures for receiving and ensuring proper consideration of evidence submitted by the public about violations. Public effort in reporting violations shall be encouraged, and the State Director shall make available information on reporting procedures.

(d) Inspections shall be conducted, samples shall be taken and other information shall be gathered in a manner that will produce evidence admissible in an enforcement proceeding or in court.

**§ 123.32 Enforcement.**

Any State agency administering a permit program shall have the following powers and procedures and recourse to criminal and civil remedies:

(a) In the case of Section 402 programs, procedures which enable the State Director immediately and effectively to halt or eliminate any imminent or substantial endangerment to the public health or welfare resulting from the discharge of pollutants:

(1) By an order or suit in the appropriate State court to immediately restrain any person causing or contributing to the discharge of pollutants; or

(2) By a procedure for immediate telephone notice to the Regional Administrator of any actual or threatened endangerment to the public health or welfare resulting from the discharge of pollutants.

(b) In the case of section 404 programs, procedures which enable the State Director immediately and effectively to halt or eliminate any unauthorized discharges of dredged or fill material, including the authority to do each of the following:

(1) Issue a cease and desist or an interim protective order to any person responsible for or involved in an unauthorized discharge;

(2) Sue in the appropriate State court to immediately restrain any person responsible for or involved in an unauthorized discharge; and

(3) Immediately notify the Regional Administrator by telephone of any actual or threatened endangerment to the public health or welfare resulting from any discharge of dredged or fill material.

(c) Procedures which enable the State Director to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any permit term or condition without the necessity of a prior revocation of the permit.

(d) Procedures which enable the State Director to enter any premises in which a source of a discharge, including a treatment facility, is located or in which records must be kept under terms or conditions of a permit, and otherwise to investigate, inspect or monitor any suspected violations of applicable standards and limitations or of permit terms or conditions.

(e) Procedures which enable the State Director to require compliance with and to assess or to sue to recover in court civil penalties, for the violation by any person of the following:

(1) Any applicable standards and limitations;

(2) Any permit term or condition;

(3) Any filing requirements;

(4) Any duty to allow or carry out inspection, entry, or monitoring activities;

(5) any order issued by the State Director under paragraph (a) or (b) of this section; or

(6) Any rules, regulations, or orders issued by the State Director.

(f) Procedures which enable the State Director to seek criminal fines for the willful or negligent violation by any person of any of the following:

(1) Any applicable standard or limitations;

(2) Any permit term or condition; or

(3) Any filing requirements.

(g) Procedures which enable the State Director to seek criminal fines against any person who knowingly makes any false statement, representation, or certification in any permit program form or any notice or report required by the terms and conditions of any issued permit or who knowingly renders inaccurate any monitoring device or method required to be maintained by the State Director.

[*Comment:* It is understood that in many States the State Director is represented in State courts by the State Attorney General or other appropriate legal officer. While the State Director need not appear in court actions under this section, he or she should have the power to request that such actions be brought.]

(h)(1) The maximum civil penalties and criminal fines that can be sought by the State Director under paragraphs (e), (f) and (g) of this section shall be comparable to similar maximum amounts that can be sought by the Administrator under section 309 of the Act. The maximum amounts of these civil penalties or criminal fines shall be applicable to each violation specified in paragraphs (e), (f) and (g) of this section, or, if the violation is continuous, to each day the discharge occurs.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraphs (e), (f) and (g) shall be no greater than the burden of proof or degree of knowledge or intent EPA must show when it brings an action under section 309 of the Act.

[*Comment:* For example, this requirement is not met if the State law includes any mental state as an element of proof for civil violations.]

(i) Any civil penalty assessed, sought, or agreed upon by the State Director under paragraph (e) of this section shall be appropriate to the violation. A civil penalty agreed upon by the State Director in settlement of administrative or judicial litigation may be adjusted by a percentage which represents the likelihood of success of establishing the underlying violation or violations in such litigation. In the event that such a civil penalty would be so severely disproportionate to the resources of the owner or operator of the violating facility that its imposition, together with the costs of expeditious compliance, would jeopardize its continuance in business, the payment of the penalty may be deferred or the penalty may be forgiven in whole or in part, as circumstances may warrant. For violations resulting from a source's failure to bring itself into initial compliance with a statutory or final permit deadline, "appropriate to the

violation" as used in this paragraph, means a penalty which is equal to:

(1) An amount appropriate to redress the harm or risk of harm to public health or the environment; plus

(2) An amount appropriate to remove the economic benefit gained or to be gained from delayed compliance; plus

(3) An amount appropriate as a penalty for the violator's degree of recalcitrance, defiance, or indifference to requirements of the law; plus

(4) An amount appropriate to recover unusual or extraordinary enforcement costs thrust upon the public; minus

(5) An amount, if any, appropriate to reflect any part of the noncompliance attributable to the Government itself; minus

(6) An amount appropriate to reflect any part of the noncompliance caused by factors completely beyond the violator's control (e.g., floods, fires, etc.)

[*Comment:* The following enforcement options, while not mandatory, are highly recommended:

(i) Procedures for assessment by the State Director or by a State court of the costs of an investigation, inspection, or monitoring survey which led to the establishment of the violation;

(ii) Procedures which enable the State Director to assess or to sue any person responsible for an unauthorized discharge for any expenses incurred by the State in removing, correcting, or terminating any adverse effects upon water quality resulting from the unauthorized discharge, whether or not accidental; and

(iii) Procedures which enable the State Director to sue for compensation for any loss or destruction of wildlife, fish, or aquatic life, and for any other actual damages caused by an unauthorized discharge either on behalf of the State, on behalf of any residents of the State who are directly aggrieved by the unauthorized discharge, or both.]

## Subpart E—Planning and Conflict of Interest Requirements.

### § 123.41 Continuing planning process.

Any State permit program shall have an approved continuing planning process under 40 CFR Part 35, Subpart G and shall assure that its approved planning process is at all times consistent with the Act.

### § 123.42 Agency board membership.

(a) Each State permit program shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous two years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(b) For the purposes of this section:

(1) "Board or body" includes any individual, including the Director, who has or shares authority to approve all or portions of permits in the first instance, as modified or reissued, or on appeal.

(2) "Significant portion of income" shall mean 10 percent of gross personal income for a calendar year, except that it shall mean 50 percent of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.

(3) "Permit holders or applicants for a permit" shall not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.

(4) "Income" includes retirement benefits, consultant fees, and stock dividends.

(c) for the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" where it is derived from mutual fund payments, or from other diversified investments over which the recipient does not know the identity of the primary sources of income.

## Subpart F—Procedures for Approval of State Permit Programs

### § 123.51 Section 402 approval process.

(a) After determining that a State program submission is complete, EPA shall publish notice of the State's application in the **Federal Register**, in enough of the largest newspapers in the State to attract statewide attention, and mail notice to persons known to be interested in such matters, including all people on EPA mailing lists under § 124.41(b) and appropriate State mailing lists and all permit holders and applicants within the State. This notice shall:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide for a public hearing within the State to be held no less than 30 days after notice is published in the **Federal Register**;

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate whom an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(b) Within 90 days of the receipt of a complete program submission under § 123.3 the Administrator shall approve or disapprove the program based on the requirements of this Part and of the Act and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains the Agency's response to these comments.

(c) If the Administrator approves the State's section 402 program he or she shall notify the State and publish notice in the **Federal Register.** The Regional Administrator shall suspend the issuance of permits by EPA as of the date of program approval.

(d) If the Administrator disapproves the State program he or she shall notify the State of the reasons for the disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

### § 123.52 Section 404 approval process.

(a) Within 10 day of receipt of a State section 404 program submission under § 123.3 of this Part, the Administrator shall provide copies of the State's submission to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service.

(b) After determining that a State program submission is complete, EPA shall publish notice of a State's application in the **Federal Register,** in enough of the largest newspapers in the State to attract Statewide attention, and mail notice to persons known to be interested in such matters, including all people on appropriate State, EPA, and Corps of Engineers mailing lists and all permit holders and applicants within the State. This notice shall:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide for a public hearing within the State to be held no less than 30 days after notice is published in the **Federal Register;**

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate whom an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(c) Within 120 days of the receipt of a complete program submission under § 123.3 the Administrator shall approve or disapprove the program based on the requirements of this Part and of the Act and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains the Agency's response to these comments.

(d) If the Administrator approves the State's section 404 program he or she shall notify the State and the Secretary and publish notice in the **Federal Register.** The Secretary shall suspend the issuance of section 404 permits by the Corps of engineers within the State, except for those waters specified in section 404(g)(1) of the Act as identified in the Memorandum of Agreement between the State and the Secretary (see § 123.5(a)).

(e) If the Administrator disapproves the State program he or she shall notify the State of the reasons for the disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

### Subpart G—Revisions to Approved Programs

#### § 123.61 Procedure for revision of State permit programs.

(a) Program revision may be initiated at the request of either EPA or the State. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State Director shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority or its forms, procedures or priorities.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's Statement, Memorandum of Agreement, or other documents as are necessary under the circumstances.

(2) If EPA determines that the proposed program modification(s) is substantial, the Agency shall issue public notice and provide at least 30 days for the public to comment. The public notice shall be mailed to interested persons and shall be published in enough of the largest newspapers in the State to attract statewide attention. The public notice shall summarize the proposed modifications and provide for the opportunity to request a public hearing. A hearing will be held if there is significant public interest.

(3) The program modification shall become effective upon the approval of the Administrator. Notice of approval of substantial program modifications shall be published in the **Federal Register.** Non-substantial program modifications may be approved by a letter from the Agency.

(c) The State Director shall notify EPA whenever the State proposes to transfer all or part of any program from the approved State agency to any other agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approved by the Administrator. Organizational charts required under § 123.4(b) shall be revised and resubmitted.

(d) If the Administrator has reason to believe that circumstances may have changed with respect to a State program, he or she may request, and the State shall provide a supplemental Attorney General's Statement, program description, other document or information as necessary.

#### § 123.62 NPDES program revisions under the Clean Water Act of 1977.

(a) Approved State NPDES permit programs shall be revised, if necessary:

(1) To include authority to require permits for the discharges specified in sections 318 and 405(a) of the Act (see § 123.1(b)).

(2) To ensure that permits comply with the requirements of section 304(e) of the Act and Part 125, Subpart K (best management practices).

(3) To comply with the amendment to section 402(b)(8) of the Act, and with 40 CFR Part 403 (pretreatment programs).

(4) To authorize State issuance, monitoring (including reporting, entry, and inspection), and enforcement of permits to Federal facilities to the same extent as any person.

[*Comment:* Facilities on Indian lands are not necessarily Federal facilities.]

(b) All new programs must comply with these regulations upon approval. Any approved State section 402 permit program which requires modification to conform to this Part shall be so modified within one year of the date of promulgation of these regulations, unless a State must amend or enact a statute in order to make the required modification in which case such modification shall take place within two years, except that revision of State programs to implement the requirements of 40 CFR Part 403 (pretreatment) shall be accomplished as provided in 40 CFR § 403.10. In addition, approved States shall submit, within six months, copies of their permit forms for EPA review and approval.

[*Comment:* EPA anticipates that many approved States may need to revise their permit forms to comply with these regulations, particularly § 122.14.]

(c) Failure of an approved State to modify its permit program under this section constitutes grounds for withdrawal of program approval.

6. Part 124 is revised to read as follows:

## PART 124—PROCEDURES FOR DECISIONMAKING REGARDING NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS

### Subpart A—Applicability

Sec.

124.1 Purpose and scope.
124.2 Definitions.

### Subpart B—The Application Process

124.11 Application for a permit.
124.12 Special provisions for applications from new sources.
124.13 Requests for modification, revocation and reissuance, or termination.
124.14 Permits required on a use-by-case basis.
124.15 Decisions on permit denials and terminations.

### Subpart C—State Certification

124.21 Circulation of applications and draft permits to certifying States.
124.22 State certification.
124.23 Effect of State certification.
124.24 Special provisions for State certification and concurrence in applications for section 301(h) modifications.

### Subpart D—Preparation of a Draft Permit

124.31 Draft permit after application.
124.32 Other draft permits.
124.33 Statement of basis.
124.34 Fact sheet.
124.35 Administrative record for EPA draft permits.
124.36 Applicability of Subpart D to draft permits incorporating section 301(h) modifications.

**Subpart E—Public Comment and Hearings**

124.41 Public notice regarding permits and permit hearings.
124.42 Public comments and hearings.
124.43 Obligation to raise points and provide information during the comment period.
124.44 Terms requested by the Corps of Engineers and other governmental agencies.
124.45 Reopening of comment period.

**Subpart F—Special Provisions for Variances and Statutory Modifications**

124.51 Time deadlines for applications for variances from and modifications of effluent limitations.
124.52 Decisions on variances and modifications.
124.53 Procedures for variances and modifications where EPA is the permit issuing authority.
124.54 Appeals of modifications and variances.
124.55 Special provisions for modifying the secondary treatment requirements under section 301(h).
124.56 Special procedures for decisions on thermal variances (section 316(a)).

**Subpart G—Issuance and Effective Date of Permit**

124.61 Issuance and effective date of permit; stays.
124.62 Final Environmental Impact Statement.
124.63 Response to comments.
124.64 Administrative record for final permit issued by EPA.

**Subpart H—Evidentiary Hearings for EPA-Issued Permits**

124.71 Applicability.
124.72 Definitions.
124.73 Filing and submission of documents.
124.74 Requests for evidentiary hearing.
124.75 Decision on request for a hearing.
124.76 Obligation to raise issues and submit evidence before a final permit is issued.
124.77 Notice of the grant of a hearing.
124.78 Ex parte communications.
124.79 Additional parties and issues.
124.80 Filing and service.
124.81 Assignment of Administrative Law Judge.
124.82 Consolidation and severance.
124.83 Prehearing conferences.
124.84 Summary determination.
124.85 Hearing procedure.
124.86 Motions.
124.87 Record of hearings.
124.88 Proposed findings of fact and conclusions; brief.
124.89 Decisions.
124.90 Interlocutory appeal.
124.101 Appeal to the Administrator.

**Subpart I—Non-Adversary Procedures for Initial Licensing**

124.111 Applicability.
124.112 Relation of other Subparts.
124.113 Public notice regarding draft permits and permit conditions.
124.114 Hearings.
124.115 Effect of denial or absence of request for hearing.
124.116 Notice of hearing.
124.117 Request to participate in hearing.
124.118 Submission of written comments on draft permit.
124.119 Presiding Officer.
124.120 Panel hearing.
124.121 Opportunity for cross-examination.
124.122 Record for final permit.
124.123 Filing of brief, proposed findings of fact and conclusions of law and proposed modified permit.
124.124 Recommended decision.
124.125 Appeal from or review of recommended decision.
124.126 Final decision.
124.127 Final decision if there is no review.

**Subpart J—Miscellaneous**

124.131 Public access to information.
124.132 Delegation of authority; time limitations.
124.133 EPA Headquarters' approval of stipulation or consent agreement.
124.134 Additional time after service by mail.
124.135 Effective date of Part 124.

**Authority.**—Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq; Administrative Procedure Act, 5 U.S.C. 551 et seq.

## Subpart A—Applicability

### § 124.1 Purpose and scope.

This Part specifies the procedures governing EPA's issuance of NPDES permits and permit appeals. The portions of this Part listed in § 123.12 apply to State permit programs approved under Part 123. This Part organizes permit decisions into a sequence of seven procedural stages. First, an application must be made in proper form (Subpart B). This application will then be circulated to affected States for certification or the State will certify the draft permit under section 401 (Subpart C). EPA will then prepare a draft permit or permit denial (Subpart D), which will be made available for public comment (Subpart E or I). This is the stage for interested governmental agencies, other than certifying States, to express their views of the permit. After these comments have been considered, EPA will issue a final permit (Subpart G or I), and any interested person may then request an evidentiary hearing on any factual questions involved. The initial decision made after that hearing may then be appealed to the Administrator. Under Part 124, decisions on variance requests will ordinarily be made during the permit issuance process (Subpart F). Requests for permit modifications and other changes in permit terms will be made where possible, through the same procedures that apply in making decisions on initial permits. Each such decision must move through the same procedures of notice-and-comment and potential hearings as the basic permit.

### § 124.2 Definitions.

(a) The definitions of Parts 122, 123 and 125 apply to this Part.

(b) "BAT" or "Best Available Technology" means the level of treatment of best available technology economically achievable as determined by the Administrator.

## Subpart B—The Application Process

### § 124.11 Application for a permit.

(a) Any person who discharges or proposes to discharge pollutants, except persons covered by general permits under § 122.48, or excluded under § 122.4, shall complete, sign, and submit an application to the Regional Administrator, in accordance with Part 122, Subpart B.

(b) Expect as provided by § 124.32(a) no NPDES permit other than a general permit shall be issued until the applicant has filed a complete application that complies with the filing requirements in this Subpart and Part 122. If an applicant fails or refuses to correct deficiencies in its NPDES application form, the permit may be denied or appropriate enforcement action may be taken under sections 308, 309, or 402(h) of the Act.

(c) Permit applications shall comply with the signature and certification requirements of § 122.5.

(d) If the Director determines that further information or a site visit is necessary in order to evaluate the discharge completely and accurately, the applicant shall be notified and a date shall be scheduled for receipt of the requested information and for any necessary site visit.

(e) Special procedures for applications for variances and statutory modifications are provided in Subpart F.

### § 124.12 Special provisions for applications from new sources.

(a) The owner or operator of any facility which may be a new source as defined in § 122.3(v) and which is located in a State without an approved NPDES program must comply with the provisions of this section in addition to the requirements of § 124.11.

(b)(1) Before beginning any on-site construction as defined in § 122.47, the owner or operator of any facility which may be a new source must submit information to the Regional Administrator so that he or she can determine if the facility is a new source. The Regional Administrator may request any additional information needed to

determine whether the facility is a new source.

(2) The Regional Administrator shall make an initial determination whether the facility is a new source within 30 days of receiving all necessary information under paragraph (b)(1).

(c) The Regional Administrator shall issue a public notice in accordance with § 124.41 of the new source determination under paragraph (b). The notice shall state that the applicant, if determined to be a new source, must comply with the environmental review requirements of 40 CFR § 6.900 *et seq.*

(d) Any interested person may challenge the Regional Administrator's initial new source determination by requesting an evidentiary hearing under § 124.74 within 30 days of issuance of the public notice of the initial determination. The Regional Administrator may defer the evidentiary hearing on the determination until after a final permit decision is made under § 124.61, and consolidate the hearing on the determination with any hearing on the permit.

**§ 124.13 Requests for modification, revocation, and reissuance, or termination.**

(a) If a discharger with a permit or an interested person believes that a modification, revocation or reissuance, or termination is justified under the standards of § 122.31, it may request a modification, revocation and reissuance, or termination from the Director in writing. The request shall set forth all facts or reasons known to the requester which may be relevant to a decision on the modification request.

(b)(1) If the Director agrees that the modification or revocation and reissuance request appears to meet the requirements of § 122.31, the Director shall formulate a draft permit under § 124.32 incorporating the changes. If additional information is needed to prepare a draft permit, the Director may request it under § 124.11(d) or in appropriate cases may require the submission of a complete new permit application under § 124.11(a). When a request for a modification under this section is granted and a new draft permit is formulated, only those terms dependent on the request will be reopened. All other aspects of the permit will remain in force until the expiration of the permit. If the permit is revoked and reissued, the draft permit is subject to the same procedures as if the permit had expired and was being reissued.

(2) If the Director agrees that the termination request appears to meet the requirements of § 122.31, the Director shall prepare a notice of intent to terminate under § 124.32.

(3) If the Director decides that the modification request does not appear to meet the requirements of § 122.31 the Director shall reply in writing to the discharger (and the person requesting the modification, if different) briefly setting forth in writing the reasons for that decision.

**§ 124.14 Permits required on a case-by-case basis.**

(a) Various sections of Part 122 allow the Director to determine, on a case-by-case basis, that certain concentrated animal feeding operations (§ 122.43), aquatic animal production facilities (§ 122.44), separate storm sewers (§ 122.46), and certain other facilities covered by general permits (§ 122.48) that do not generally require individual permits may be required to obtain one because of their contribution to water pollution.

(b) Whenever the Regional Administrator decides that an individual permit should be required under this section, the Regional Administrator shall inform the discharger in writing of that decision, the reasons underlying it and shall include an application form in such notice. The discharger must apply under § 124.11 for a permit within 60 days of such notice. The question whether the initial designation was proper will remain open for consideration during the public comment period under Subpart D and any subsequent hearing.

**§ 124.15 Decisions on permit denials and terminations.**

(a) The decision to deny a permit which has been applied for shall be made through the same procedures as any other decision on a permit. A draft notice of intent to deny will be issued and made available for public comment, accompanied by a fact sheet or statement of basis. A response to comments and final decision will then be prepared, and an evidentiary hearing with a right of appeal to the Administrator may be requested on the issues raised.

(b) The decision to terminate a permit shall be made through the same procedures that apply to any other permit action initiated by EPA under § 124.32.

(c) References to a "permit" or to decisionmaking on a permit in this Part shall be read to include decisions on permit denial or termination where necessary to carry out the intent of this section.

## Subpart C—State Certification

**§ 124.21 Circulation of applications or draft permits to certifying States.**

(a) Under section 401(a)(1) of the Act, EPA may not issue a permit until a certification is granted or waived in accordance with that section by the State in which the discharge originates or will originate.

(b) When an application is received which does not include a State certification, the Regional Administrator shall forward the application to the certifying State agency with a request that certification be granted or denied.

(c) If State certification has not been received by the time the draft permit is prepared, the Regional Administrator shall send the certifying State agency:

(1) A copy of the draft permit;

(2) A statement that the EPA cannot issue or deny the permit until the certifying State agency has granted or denied certification under § 124.22, or waived its right to certify; and

(3) A statement that the right to certify will be deemed waived unless exercised within a specified reasonable time which shall not exceed 60 days from the date the draft permit is sent to the State unless the Regional Administrator finds that unusual circumstances require a longer time.

**§ 124.22 State certification.**

(a) Any State certification shall be issued or denied within the reasonable time specified under § 124.21(c)(3). The State shall provide notice of its action, including a copy of any certification, to the applicant and the Regional Administrator.

(b) A State certification shall be made in writing and shall include:

(1) The terms and conditions which will result in compliance with the applicable provisions of sections 208(e), 301, 302, 303, 306, and 307 of the Act and with appropriate requirements of State law;

(2) Where the State certifies a draft permit instead of an application, any conditions, more stringent than those in the draft permit, which the State finds necessary to comply with the requirements listed in paragraph (b)(1) of this section. For each such condition, the provision of the Act or State law which forms the basis for the condition shall be identified. Failure to provide such a statement shall be deemed a waiver of the right to certify with respect to such condition; and

(3) A statement with respect to each term and condition of the draft permit of the extent to which such term or condition can be made less stringent

without violating the requirements of State law including water quality standards. Failure to provide such a statement shall be deemed a waiver of the right to certify with respect to any such less stringent term or condition which may be established during the EPA permit issuance process.

[*Comment:* The requirement of paragraph (b)(3) of this section is necessary to enable the certification to serve its statutory function without requiring continual resubmission to the State. For example, a State might certify that a draft permit containing a technology-based limitation of 300 kg/day of BOD will meet State water quality standards and other State law requirements. However, if during the permit issuance process EPA decides that 400 kg/day is the appropriate technology requirement, it is not clear at present whether the previous State certification continues to be valid. It would be impracticable and would add to delay in permit issuance if EPA resubmitted such permits to the State each time EPA considered setting a less stringent limitation than contained in the draft permit. The requirement that States clearly identify what conditions are necessary to meet State law will simplify the permit issuance process and make certification more useful. However, States may not require EPA to adopt less stringent requirements. See § 124.23(c).]

**§ 124.23 Effect of State certification.**

(a) Where certification is required under section 401(a)(1) of the Act, no final permit shall be issued:

(1) If certification is denied, or

(2) Unless the final permit incorporates any requirements specified in the certification under § 124.22(b)(1) and (2).

(b) If the State law upon which a certification is based changes, or if a State court stays, vacates, or remands a certification, a State which has issued a certification under § 124.22 may issue a modified certification or notice of waiver and forward it to EPA. If the modified certification is received prior to final Agency action on the permit, the permit shall be issued consistent with any more stringent conditions which are based upon State law identified in such certification. If the certification or notice of waiver is received after final Agency action on the permit, the Regional Administrator may modify the permit only to the extent necessary to delete any conditions based on a condition in a certification found invalid by a State court.

(c) A State may not condition a certification or deny a certification on the grounds that State law requires a less stringent condition. The Regional Administrator shall disregard any such certification conditions, and will consider such denials of certification to constitute waivers of certification.

[*Comment:* State certification rights proceed from the authority of States under section 510 of the Act to set more stringent limitations than those required by the Act. States may not require EPA to disregard or downgrade Federal requirements.]

(d) A permit may be modified during Agency review in any manner consistent with a certification meeting the requirements of § 124.22(b). No such modifications shall require EPA to submit the permit to the State for recertification.

(e) Review and appeals of conditions specified by the State shall be made through the applicable procedures of the State and may not be made through the procedures in this Part.

**§ 124.24 Special provisions for State certification and concurrence in applications for section 301(h) modifications.**

(a) Where an application for a permit incorporating a request under 301(h) of the Act is submitted to the State, the appropriate State official may either:

(1) Deny the request for the modified permit under section 301(h) (and so notify the applicant and EPA) and if the State is an approved NPDES State and the permit is due for reissuance, proceed to process the permit application under normal procedures; or

(2) Forward a certification meeting the requirements of this Subpart to the Administrator or a person designated by the Administrator.

(b) Where EPA issues a tentative determination on the request for a modified permit under section 301(h), and no certification has been received under paragraph (a), the Administrator or a person designated by the Administrator shall forward the tentative determination to the State in accordance with § 124.21(c) specifying a reasonable time for State certification and concurrence. If the State fails to deny or grant certification and concurrence under paragraph (a) within such reasonable time, certification will be deemed to be waived and the State will be deemed to have concurred in the issuance of a modified permit under section 301(h).

(c) Any certification provided by a State under paragraph (a)(2) shall constitute the State's concurrence (as required by section 301(h)) in the issuance of the section 301(h) modified permit subject to any conditions specified therein by the State.

[*Comment:* Section 301(h) certification/concurrence under this section will not be forwarded to the State by EPA for recertification after the permit issuance process. Accordingly, States must specify any conditions required by State law, including water quality standards, in the certification.]

## Subpart D—Preparation of Draft Permit

**§ 124.31 Draft permit after application.**

(a) If a permit has been properly requested under § 124.11, the Director, after analyzing the data and other information concerning a permit furnished under Subparts B and C, and any other relevant information, shall tentatively decide whether to issue or deny the permit. Any Environmental Impact Statement prepared under 40 CFR § 6.912, and any other applicable factors listed in 40 CFR § 6.920, shall be considered by the Regional Administrator in deciding whether to issue a permit for a new source under this section.

(b) If the Director tentatively decides to issue a permit, a draft permit shall be prepared containing:

(1) All conditions, limitations, or requirements specified in § 122.14;

(2) All effluent limitations, standards, prohibitions, and conditions required by § 122.15, including, where applicable, any conditions certified by a State agency under Subpart C, and all variances or other modifications that are to be included under Subpart F. All effluent limitations and standards shall be calculated and specified as required by § 122.16;

(3) All compliance schedules required by § 122.17; and

(4) All monitoring requirements required by § 122.20.

(c) Any draft permit formulated by EPA shall be based on the administrative record required by § 124.35.

(d) If the Regional Administrator determines under 40 CFR § 6.910 that an EIS shall be prepared for a new source the public notice of the draft permit under this section shall occur at the same time or after a draft EIS is issued.

**§ 124.32 Other draft permits.**

(a) In the following cases the Director may formulate a draft permit without having received an application from a discharger.

(1) If the Director decides that a permit should be modified, or revoked and reissued under § 122.31, the Director shall formulate a draft permit reflecting the modifications or a draft reissued permit including a notice of intent to revoke the existing permit. If the Director decides that a permit should be terminated, the Director shall issue a notice of intent to terminate.

(2) General permits to be issued either by EPA or by States under § 122.48 shall be proposed in draft form, shall contain the designation of the General Permit Program Area (as defined in § 122.48(a)(2)) and, except for general permits for separate storm sewers, shall be sent to the EPA Deputy Assistant Administrator for Water Enforcement for concurrence or objection during the public comment period. No final permit shall be issued if the EPA Deputy Assistant Administrator for Water Enforcement objects to the general permit. Such objection must be made within 90 days from the date of publication of the public notice for the draft general permit under § 124.41(f).

(b) Any draft permit or notice of intent to revoke or terminate, issued under paragraph (a), shall be based on the administrative record defined in § 124.35.

**§ 124.33 Statement of basis.**

A statement of basis shall be prepared for every draft permit formulated under §§ 124.31 or 124.32 where a fact sheet is not required under § 124.34. The statement of basis shall briefly describe the derivation of the terms and conditions of the permit and the reasons for them. For instance, if effluent limitations in a permit are based upon the application of treatment technologies, the statement of basis shall identify the technologies and the degree of effluent reduction or control which the treatment technologies are assumed to achieve. The statement of basis shall be part of the administrative record and shall be made available to the discharger and other members of the public on request.

**§ 124.34 Fact sheet.**

(a) A fact sheet shall be prepared for every draft permit for a major discharger (as established in EPA's annual operating guidance for EPA Regional Offices and the States), any draft permit which incorporates a variance or modification, general permits under § 124.48, and every draft permit which the Regional Administrator or State Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the major facts and the significant factual, legal, methodological, and policy questions considered in setting the terms of the draft permit. The Director shall send this fact sheet to the applicant, to the District Engineer of the Corps of Engineers, to the Regional Director of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, to other interested State and Federal agencies, (including EPA where the draft permit is prepared by the State) and to any other person on request. Any of these persons may waive their right to receive a fact sheet for any classes and categories of permits.

(b) The fact sheet shall include: (1) A brief explanation of the express statutory or regulatory provisions on which permit requirements are based, and for permits issued by EPA, appropriate supporting references to the administrative record required by § 124.35;

(2) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable guideline or development documents or standard provisions as required under § 122.15 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

(3) Where appropriate, a sketch or detailed description of the location of the discharge described in the application;

(4) A quantitative description of the discharge described in the application;

(5) Reasons requested variances or modifications do or do not appear justified;

(6) For EPA-issued permits the results of any State certification under Subpart C;

(7) Name and telephone number of a person who can provide additional information; and

(8) Any information, not otherwise specified herein, required by § 124.33.

**§ 124.35 Administrative record for EPA draft permits.**

(a) Decisions by the Regional Adminstrator to formulate a draft permit under § 124.31 or § 124.32 shall be made on the basis of the administrative record defined in this section.

(b) The record for a draft permit under § 124.31 shall consist of:

(1) The initial application and any supporting data furnished by the applicant;

(2) The draft permit;

(3) The statement of basis required by § 124.33 or fact sheet prepared under § 124.34;

(4) All documents cited in the fact sheet or the statement of basis;

(5) Other documents contained in the supporting file for the permit, including correspondence, telephone and meeting memoranda, compliance reports, etc;

(6) All comments submitted on a new source determination under § 124.12, and any other documents EPA considers relevant to the determination; and

(7) Any environmental assessment, Environmental Impact Statement, negative declaration, or environmental impact appraisal that may have been prepared.

(c) The record for formulating a draft permit under § 124.32 shall consist of the draft permit, the statement of basis required by § 124.33 or fact sheet prepared under § 124.34 and all documents cited in the fact sheet or the statement of basis.

(d) Material readily available at the issuing Regional Office or published material which is generally available, and which is included in the administrative record under the standards of paragraphs (b) and (c), does not need to be physically included in the same file as the rest of the record as long as it is specifically referenced in the statement of basis or the fact sheet.

(e) No later than the time a draft permit is issued, a Record Clerk shall be designated with responsibility for maintaining the records established under this section. Copying of any documents in the record shall be allowed under appropriate arrangements to prevent their loss. The charge for such copies shall be made in accordance with the written schedule contained in 40 CFR Part 2.

[*Comment:* The administrative record for draft permits under this section will comprise the bulk of the material for the final administrative record. See § 124.64.]

**§ 124.36 Applicability of Subpart D to draft permits incorporating section 301(h) modifications.**

Subpart D is applicable to draft permits incorporating section 301(h) modifications except that the terms "Administrator or a person designated by the Administrator" shall be substituted for the terms "Regional Administrator" as appropriate.

## Subpart E—Public Comment and Hearings

**§ 124.41 Public notice regarding permits and permit hearings.**

(a) Notices shall be circulated in a manner designed to inform interested persons of a hearing or determination dealing with permit denial or issuance. Notice of a draft permit shall allow at least 30 days for public comments and notice of a hearing shall be given 30 days before the hearing.

[*Comment:* At the discretion of the Director, this could include press releases or the use of additional means to elicit public participation.]

(b) Notice of the formulation of any draft permit and notice of all hearings shall be given by the Director:

(1) By mailing a copy to the applicant; to the U.S. Army Corps of Engineers, to Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources and to other appropriate governmental authorities including any affected State; to any person on request and to all persons on a mailing list developed from those who request to be on the list and by using the following methods:

(i) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(ii) Notifying the public as to the availability of mailings of public notices through periodic press publication and notices in such publications as Regional and State funded newsletters, environmental bulletins or State Law Journals. The mailing list may be updated from time to time by requesting an indication of continued interest in being on the mailing list; and

(2) By any of the following methods:

(i) By publication of a notice meeting the requirements of paragraph (c) in a daily or weekly newspaper within the area affected by the discharge; or

(ii) By posting a copy of the information required under paragraph (c) and (d) at the principal office of the municipality or political subdivision affected by the facility or discharge, and by posting a copy at the United States Post Office serving those premises; or

(iii) Where the State is the permit issuing authority in any other manner constituting legal notice under State law.

(3) Any person otherwise entitled to receive notice under paragraph (1) of this section may waive the right to receive notice for any classes and categories of permits.

(c) All public notices issued under this section shall contain the following information:

(1) Name and address of the office processing the application or conducting the hearing;

(2) Except in the case of general permits, name and address of the applicant and the discharger (if different from the applicant) and a general description of the location of each existing or proposed discharge point, including the receiving water;

(3) Name of a person, and an address and telephone number where interested persons may obtain further information, including copies of the draft permit, the statement of basis or fact sheet;

(4) For EPA-issued permits, the location of the administrative record required by § 124.35 and the times at which it will be open for public inspection;

(5) If the applicant has properly applied under section 316(a) for a thermal variance, a statement to that effect. The notice shall state that all data submitted by the applicant are available as part of the administrative record for public inspection during office hours. The notice shall also state that any person may comment in writing under § 124.42 upon the applicant's desired alternative effluent limitations and may also request a hearing.

(d) Mailed public notice to those identified in paragraph (b)(1) shall contain the information required under paragraph (c) and the following:

(1) A brief description of the applicant's activities or operations that result in the discharge described in the application, and a statement whether the application pertains to a new or existing discharge;

(2) A brief description of the comment procedures required by § 124.42, including the time and place of any public hearing that will be held.

(3) If the discharge is from a new source, a statement of the Regional Administrator's decision as to whether an Environmental Impact Statement will be or has been prepared.

(4) A statement of the right and procedures to request a public hearing.

(e) In addition to the information required by paragraphs (c) and (d) above, mailed public notice of a draft permit for a discharge where a section 316(a) application has been filed under § 124.51(b)(6) shall include:

(1) A statement that the thermal component of the discharge is subject to effluent limitations under sections 301 or 306 of the Act and a brief description including a quantitative statement of the thermal effluent limitations proposed under sections 301 or 306; and

(2) A statement that a section 316(a) application has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under section 316(a) and a brief description including a quantitative statement of the alternative effluent limitations, if any, included in the application.

(3) If the applicant has filed an early screening application for a section 316(a) variance under § 125.72, a statement that the applicant has submitted such a plan.

(f) Notice of the formulation of a draft general permit and the issuance of a final general permit under § 122.48 shall meet:

(1) The requirements of paragraphs (c) and (d) and shall be published in a daily or weekly newspaper within the area affected by the discharge and in the **Federal Register** for EPA-issued permits or in a manner constituting legal notice under State law for State-issued permits.

(2) The public notice for general permits shall also include:

(i) A brief description of the types of activities or operations to be covered by the general permit;

(ii) A map or description of the General Permit Program Area; and

(iii) The basis for choosing the General Permit Program Area.

(3) The Director shall use all other reasonable means to notify affected dischargers of the draft and final general permit.

(g) In addition to the information required under paragraph (c), public notice of a public hearing held under § 124.42(b) shall contain the following information:

(1) Reference to the date of the public notice of the draft permit;

(2) Date, time and place of the hearing; and

(3) In the case of a mailed public notice, a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(h) A public notice of the grant of an evidentiary hearing under Subpart H shall contain the information required under paragraph (c), (g)(1), (g)(3) and a mailed public notice of such a hearing shall also include:

(1) Reference to any public hearing under § 124.42 on the disputed permit;

(2) Name and address of the person(s) requesting the evidentiary hearing;

(3) Brief description of the permit terms and conditions which have been contested and for which the evidentiary hearing has been granted;

(4) Brief description of the nature and purpose of the hearing including the following declarations:

(i) Any person seeking to be a party must file a request to be admitted as a party to the hearing within 15 days of the date of publication of this notice;

(ii) Any person seeking to be a party may, subject to the requirements of § 124.76, propose material issues of fact or law not already raised by the original requester or another party;

(iii) The terms and conditions of the permit(s) at issue may be amended after the evidentiary hearing and any person interested in those permit(s) must request to be a party in order to preserve any right to appeal or otherwise contest the final administrative determination.

(5) Names or organizational description of the EPA employees who shall constitute "Agency trial staff" and the "decisional body" under § 124.78 who are subject to the *ex parte* communication rules.

(6) The name, address and office telephone number of the Regional Hearing Clerk.

(i) A public notice for a draft permit that will be processed under Subpart I shall include the information in paragraphs (c) and a statement that any hearing will be held under the non-adversary initial licensing procedures. In addition, a mailed public notice shall include:

(1) The information in paragraph (d) except that a public hearing under paragraph (d)(2) is discretionary with the Regional Administrator;

(2) A statement that the permit will be processed under the nonadversary procedures for initial licensing of Subpart I, together with a brief description of those procedures. This description shall state explicitly the manner and timing for any person to request a hearing on the permit. If EPA has decided on its own motion to hold a hearing, the notice shall so state, and shall also contain the information required by § 124.41(j);

(3) A statement that written comments on the draft permit and, in the case of a section 301(h) application, the tentative determination to grant or deny the application submitted to EPA with thirty (30) days of the date of the notice will be considered by EPA in making a final decision on the application. This 30-day period may be extended up to 60 days *sua sponte* or on request of an interested party;

(4) In the case of the public notice of the draft permit or denial of an application for a modified permit under section 301(h) shall include:

(i) A summary of the information contained in the application; and

(ii) A summary of the tentative determination prepared under § 124.114(f).

(j) A notice of a grant of a panel hearing requested under Subpart I shall include the applicable information from paragraph (i). In addition, the mailed public notices shall include:

(1) Name and address of the person requesting the hearing, or a statement that the hearing is being held by order of the Regional Administrator, and the name and address of each known party to the hearing;

(2) Names or organization description of the EPA employees who shall constitute the "decisional body" and the "Agency trial staff," under § 124.78 who are subject to the *ex parte* communication rules;

(3) A statement whether the recommended decision will be issued by the Presiding Officer or by the Regional Administrator;

(4) The due date for filing a written request to participate in the hearing under § 124.117;

(5) The due date for filing comments under § 124.118; and

(6) The name, address, and office telephone number of the Regional Hearing Clerk.

**§ 124.42 Public comments and hearings.**

(a) A comment period of at least 30 days following the date of public notice of the formulation of a draft permit shall be provided. During this period any interested persons may submit written comments on the draft permit and administrative record and may request a public hearing. A request for a public hearing shall be in writing and shall state the nature of the issues to be raised. All comments shall be considered in preparing the final permit and shall be responded to as provided in § 124.63.

(b)(1) In appropriate cases, including cases where there is significant public interest, the Director may hold a public hearing on a draft permit or permits. Public notice of that hearing shall be given as specified in § 124.41.

(2) Any person appearing at such a hearing may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.

**§ 124.43 Obligation to raise points and provide information during the comment period.**

All persons, including applicants, who believe any of the terms of a draft permit are not appropriate either because one of the variances or modifications listed in Subpart F should be granted or for some other reason, must raise all reasonably ascertainable issues and submit all arguments and factual grounds supporting their position, including all supporting material by the close of the public comment period (including any public hearing period) required by § 124.42.

**§ 124.44 Terms requested by the Corps of Engineers and other governmental agencies.**

(a) If the District engineer of the Corps of Engineers advises the Director in writing during the public comment period that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall include the specified conditions in the permit. Review or appeal of a denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this Part.

(b) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any State or other Federal Agency with jurisdiction over fish, wildlife, or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Act.

(c) In appropriate cases the Director may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

**§ 124.45 Reopening of comment period.**

If any information or arguments submitted during the public comment period, including information or arguments whose submission is required under § 124.43, appears to raise substantial new questions concerning a permit, the Director may conclude that one of the following actions is necessary for an informed decision:

(a) Formulation of a new draft permit, appropriately modified, under § 124.42;

(b) Preparation of a fact sheet or revised fact sheet under § 124.34 and reopening the comment period under § 124.42; or

(c) Reopening of the comment period under § 124.42 to give interested persons an opportunity to comment on the information or arguments submitted.

In each case the notice required by § 124.41 shall be given.

## Subpart F—Special Provisions for Variances and Statutory Modifications

**§ 124.51 Time deadlines for applications for variances from and modifications of effluent limitations.**

(a) Except as provided in paragraph (d), applications for variances from and

modification of effluent limitations under the statutory and regulatory provisions of the Act shall be made as provided in paragraph (b) and (c).

(b) *Dischargers other than publicly owned treatment works.* (1) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based, shall be made by the close of the public comment period under § 124.42. The request shall explain why the requirements of § 124.43 and Part 125, Subpart D have been met.

(2) A request for a variance from the BAT requirements for section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to section 301(c) because of the economic capability of the owner or operator; or pursuant to section 301(g) because of certain environmental considerations, where those requirements were based on effluent limitation guidelines, must be made by:

(i) Submitting an initial application to the Regional Administrator and the State Director stating the name of the applicant, the permit number, the outfall number(s), the applicable effluent guideline, and whether the applicant is applying for a section 301(c) or section 301(g) modification or both. This application shall be filed not later than:

(A) September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or

(B) 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977;

(ii) Submitting a completed request demonstrating that the requirements of § 124.43 and the applicable requirements of Part 125 have been met no later than the close of the public comment period under § 124.42.

(iii) Requests for variance of effluent limitations based on other than effluent limitation guidelines, shall comply only with paragraph (ii) and need not submit an initial application under paragraph (i).

(3) An extension under section 301(i)(2) of the statutory deadlines in sections 301(b)(1)(A) or (b)(1)(C) based on delay in completion of a publicly owned treatment work into which the source is to discharge must have been requested on or before June 26, 1978, or 180 days after the relevant publicly owned treatment works requests an extension under paragraph (c)(2) of this section, whichever is later. The request shall explain why the requirements of Part 125, Subpart J have been met.

(4) An extension under section 301(k) from the statutory deadline of section 301(b)(2)(A) for best available control technology based on the use of innovative technology may be requested no later than the close of the public comment period under § 124.42 for the discharger's initial permit requiring compliance with best available control technology. The request shall explain why the requirements of § 124.43 and Part 125, Subpart C have been met.

(5) A modification under section 302(b)(2) of requirements under section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under § 124.42 on the permit from which the variance is sought. The request shall explain why the requirements of that section have been met.

(6) A variance under section 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under § 124.11. If thermal effluent limitations are established under section 402(a)(1) or are based on water quality standards the application shall by filed by the close of the public comment period under § 124.42. A copy of the application as required under Part 125, Subpart H shall be sent simultaneously to the appropriate State or interstate certifying agency. (See § 124.56 for special procedures for section 316(a) thermal variances.)

(c) *Publicly owned treatment works.* (1) A preliminary application for a modification under section 301(h) from requirements of section 301(b)(1)(B) for discharges into marine waters must have been submitted to the Agency no later than September 25, 1978. A final application must be submitted in accordance with the filing requirements of Part 125, Subpart G, after that Subpart is promulgated, and shall demonstrate on its face that all the requirements of Part 125, Subpart G have been met. (See § 124.55 for special rules for section 301(h) modifications.)

(2) An extension under section 301(i)(1) from the statutory deadlines in sections 301(b)(1)(B) or (b)(1)C) based on delay in the construction of publicly owned treatment works must have been requested on or before June 26, 1978.

(3) A modification under section 302(b)(2) of the requirements under section 302(a) for achieving water quality based effluent limitations may be requested no later than the close of the public comment period under § 124.42 on the permit from which the modification is sought.

(d)(1) Notwithstanding any later time specified in paragraphs (b) and (c), the Director may notify the applicant before a draft permit is published pursuant to § 124.41 that the draft permit will likely contain limitations which are eligible for variances or modifications. In such notice the Director may require the applicant as a condition of consideration of any potential variance request to submit a full application within a specified reasonable time before the draft permit is formulated. This notice can be sent before the application under § 124.11 has been submitted.

[*Comment:* This paragraph is intended to reduce the time for permit issuance, especially in those cases where it is clear that a variance or modification will be applied for, such as where the discharger has submitted a variance application under § 124.51(b)(2)(i) even before the permit application is filed under § 124.11.]

(2) A discharger who cannot file a complete request required under paragraphs (b)(2)(ii), (b)(2)(iii), (b)(3)(ii) or (b)(3)(iii) may request an extension to apply. Extensions shall be limited to the time the Director determines is necessary to satisfy the requirements of the appropriate regulations, but shall be no more than six months in duration. The request may be granted or denied in the discretion of the Director.

**§ 124.52 Decisions on variances and modifications.**

(a) The Director may grant or deny the following modifications or variances (subject to EPA objection under § 123.23 for State permits):

(1) Extensions under section 301(i) based on delay in completion of a publicly owned treatment works;

(2) After consultation with the Regional Administrator, extensions under section 301(k) based on the use of innovative technology; or

(3) Variances under section 316(a) for thermal pollution.

(b) The State Director may deny, or forward to the Regional Administrator with a written concurrence or submit to EPA without recommendation a completed application for:

(1) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;

(2) A variance based on the economic capability of the applicant under section 301(c) of the Act;

(3) A variance based upon certain water quality factors under section 301(g); of

(4) A modification of section 302(b)(2) requirements under section 302(a) (water quality related effluent limitations).

(c) The Regional Administrator may deny, or may forward to the EPA Deputy Assistant Administrator for Water Enforcement with recommendation for approval, an application for a variance listed in paragraph (b) which is forwarded by the State Director, or submitted to the Regional Administrator by the applicant where EPA is the permitting authority.

(d) The EPA Deputy Assistant Administrator for Water Enforcement may approve or deny any variance application submitted under paragraph (c). If the EPA Deputy Assistant Administrator approves the variance, the Director may formulate a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that determination under § 124.54.

**§ 124.53 Procedures for variances and modifications where EPA is the permit issuing authority.**

(a) In states where EPA is the permit issuing authority and an application for a variance or modification is filed as required by § 124.51, the application shall be processed as follows:

(1) If at the time an application for a variance or modification is submitted the Regional Administrator has received an application under § 124.11 for issuance or renewal of that permit but has not yet formulated a draft permit under § 124.31 covering the discharge in question, the Regional Administrator after obtaining any necessary concurrence of the EPA Deputy Assistant Administrator for Water Enforcement under § 124.52, shall set forth a tentative determination on the request at the time the draft permit is formulated as specified in § 124.31, unless this would significantly delay the processing of the permit. In that case the processing of the variance or modification request may be separated from the permit in accordance with paragraph (3), and the processing of the permit shall proceed without delay.

(2) If at the time an application for a variance or modification is filed the Regional Administrator has formulated a draft permit under § 124.31 covering the discharge in question, but that permit has not yet become final under § 124.101, administrative proceedings concerning that permit may be stayed and the Regional Administrator shall formulate a new draft permit including a tentative determination on the request, and the fact sheet required by § 124.34. However, if this will significantly delay the processing of the existing permit or the Regional Administrator for other reasons considers combining the variance request and the existing permit inadvisable, the request may be separated from the permit in accordance with paragraph (3), and the administrative disposition of the existing permit shall proceed without delay.

(3) If the permit has become final under § 124.101 and no application under § 124.11 concerning it is pending or if the variance or modification request has been separated from a permit as described in paragraphs (1) and (2), the Regional Administrator shall formulate a new draft permit under § 124.31. This permit shall be accompanied by the fact sheet required by § 124.34, except that the only matters considered shall relate to the requested variance.

**§ 124.54 Appeals of modifications and variances.**

(a) Normally, the appeals of permit determinations are handled in one proceeding, either State or Federal. When a State issues a permit in which EPA has made a variance determination, a separate appeal on that determination is possible. In such cases, requests for appeal of the EPA permit conditions must be filed under Subpart I after the public notice of the grant or denial of the variance. If the owner or operator is challenging issues in a State proceedings on the same permit, the Regional Administrator will decide, in consultation with State officials, which case will be heard first.

(b) Appeals of modifications or variance determinations shall be governed by Subpart I unless the Regional Administrator determines that consolidation with an evidentiary hearing under Subpart H will expedite consideration of the issues presented.

[*Comment:* The panel proceedings of Subpart I will generally be utilized when there is a State-issued permit and only the variance issues are in the Federal forum.]

(c) *Stays for section 301(g) variances.* Under the authority of section 301(j)(2), if a request for an evidentiary hearing is granted regarding a variance under section 301(g), or if a petition for timely review of the denial of a request for an evidentiary hearing is timely filed with the Administrator under § 124.101 with respect to such a variance, any otherwise applicable standards and limitations under section 301 of the Act shall not be stayed unless:

(1) In the judgment of the Regional Administrator, the stay or the variance sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity, or synergistic propensities; and

(2) In the judgment of the Regional Administrator, there is a substantial likelihood that the discharger will succeed on the merits of its appeal; and

(3) The discharger files any bond or other appropriate security which is required by the Regional Administrator to assure timely compliance with the requirements from which a variance is sought in the event that the appeal is unsuccessful.

(d) Stays for variances or modifications other than section 301(g) will be granted or denied pursuant to § 124.61.

**§ 124.55 Special provisions for modifying the secondary treatment requirement under section 301(h).**

(a) Where it is clear on the face of a section 301(h) application that the discharger is not entitled to a modification, the application shall be denied.

(b) In the case of all other section 301(h) applications the Administrator, or a person designated by the Administrator may either:

(1) Give written authorization to an applicant to submit information required by Part 125, Subpart G or the final application by a date certain, not to exceed 9 months, if:

(i) The applicant proposes to submit new or additional information and the applicant demonstrates that:

(A) The applicant made consistent and diligent efforts to obtain such information prior to submitting the final application;

(B) The failure to obtain such information was due to circumstances beyond the control of the applicant; and

(C) Such information can be submitted promptly; or

(ii) The applicant proposes to submit minor corrective information and such information can be submitted promptly; or

(2) Make a written request of an applicant to submit additional information by a date certain, not to exceed 9 months, if such information is necessary to issue a tentiative determination under § 124.114(g).

All additional information authorized or requested under this paragraph which is timely received, shall be considered part of the original application.

(c) Applications for modifications under section 301(h) shall be processed independently of any pending

application for the issuance or reissuance of a permit requiring the applicant to meet effluent limitations based on secondary treatment under section 301(b)(1)(B).

(d) No modified permit shall be issued granting a section 301(h) modification unless the appropriate State officials have concurred or waived concurrence pursuant to § 124.24. In the case of a permit issued to an applicant in an approved State, the State Director may:

(1) Revoke any existing permit as of the effective date of the EPA-issued modified permit; and

(2) Co-sign the modified permit, if the Director has indicated an intent to do so in the written concurrence.

(e) Appeals of determinations under section 301(h) shall be governed by Part 124, Subpart I.

**§ 124.56 Special procedures for decisions on thermal variances (section 316(a)).**

(a) Except as provided in § 124.53 the only issues connected with issuance of a particular permit on which EPA will make a final Agency decision before the final permit is issued under § 124.61 are whether alternative effluent limitations would be justified under section 316(a) and whether cooling water intake structures will use the best available technology under section 316(b). Applicants who wish an early decision on these issues should request it and furnish supporting reasons at the time their applications are filed under § 124.51(b)(6). The Regional Administrator will then decide whether or not to grant it. If it is granted, both the early decision on section 316 (a) or (b) issues and the grant of the balance of the permit shall be considered permit issuance under these regulations, and shall be subject to the same requirements of public notice and comment and the same opportunity for an evidentiary hearing.

(b) If the Regional Administrator, on review of the administrative record, determines that the information necessary to decide whether or not an alternative effluent limitation under section 316(a) should be granted to a source is not likely to be available by the time a decision on permit issuance must be made, the Regional Administrator may issue a permit under § 124.61 for a term of up to five years. This permit shall require that the point source achieve the effluent limitations initially proposed for the control of the thermal component of the discharge no later than the date otherwise required by applicable legal requirements. However, the permit shall also afford the permittee an opportunity to file a demonstration under section 316(a) after conducting such studies as are required under Part 125, Subpart H.

[*Comment:* A new discharger may not commence operation in violation of the thermal effluent limitations which are initially proposed unless and until the section 316(a) variance request is finally approved.]

(c) Any hearing scheduled under paragraph (a) shall be publicized as required by § 124.41 and shall be scheduled enough in advance of the final compliance date specified in the permit to allow the permittee to take necessary measures to comply by that date in the event its request for modification of thermal limits is eventually denied after the hearing is concluded.

(d) Whenever the Regional Administrator defers the determination under section 316(a), any determination under section 316(b) may be deferred.

## Subpart G—Issuance and Effective Date of Permit

**§ 124.61 Issuance and effective date of permit; stays.**

(a)(1) After the close of the public comment period (including any public hearing period) required by § 124.42 on a draft permit, the Regional Administrator shall prepare and issue a final permit and shall serve notice as provided in § 124.80(c) of that action of the applicant, and on each person who has submitted written comments or requested notice of the issuance of the final permit. This notice shall include reference to the procedures available to contest the permit terms under § 124.74 *et seq.*

[*Comment:* A statement signed by a person in the Regional Office that an attached list of persons were mailed the notice of issuance of the final permit is sufficient to meet the requirements of § 124.80(c). The mailed notice need not be sent certified mail.]

(b) Any final permit issued under paragraph (a) constitutes final action of EPA, when it becomes effective under paragraph (c) unless a request for an evidentiary hearing under § 124.75 or a panel hearing under § 124.114 is granted.

(c) Except as provided in paragraphs (d), (e) and (f), a permit or modification shall become effective 30 days after the service of notice of the final permit under paragraph (a), unless a later effective date is specified in the permit.

(d) If a request for an evidentiary hearing is granted under § 124.75 or § 124.111(a)(3) regarding the initial permit issued for a new source or a new discharger, or if a petition for review of the denial of a request for an evidentiary hearing with respect to such a permit is timely filed with the Administrator under § 124.101, the applicant shall be without a permit for the proposed new source or new discharge, pending final Agency action under § 124.101.

(e)(1) If a request for a hearing is granted in whole or in part under § 124.75 or § 124.111(a)(3) regarding a permit for an existing source, or if a petition for review of the denial of a request for an evidentiary hearing with respect to such a permit is timely filed with the Administrator under § 124.101, the force and effect of the contested provisions of the final permit shall be stayed and shall not be subject to judicial review under section 509(b) of the Act, pending final Agency action under § 124.101. The Regional Administrator shall serve notice, in accordance with § 124.75, on the discharger and all parties identifying the terms of the final permit which are not contested and therefore are enforceable obligations of the discharger.

(2) Where effluent limitations are contested, but the underlying control technology is not, the notice shall identify the installation of the technology in accordance with the permit compliance schedules (if uncontested) as an uncontested, enforceable obligation of the permit.

(3) Where a combination of technologies is contested, but a portion of the combination is not contested, such portion shall be identified as uncontested if compatible with the combination of technologies proposed by the requester.

(4) A term or condition, otherwise uncontested, shall not be identified as uncontested if it is inseverable from a contested term or condition.

(5) Uncontested terms and conditions shall become enforceable 30 days after the date of such notice, provided, however, that if a request for an evidentiary hearing on a term or condition was denied and the denial is appealed under § 124.101, then such term or condition shall become enforceable upon the date of the notice of the Administrator's decision on the appeal if the denial is affirmed, or shall be stayed, in accordance with this section, if the Administrator reverses the denial and grants the evidentiary hearing on such permit term.

(6) Uncontested terms and conditions shall include:

(i) Permit requirements for which an evidentiary hearing has been requested but the hearing has been denied;

(ii) Preliminary design and engineering studies or other requirements necessary to achieve the

final permit term or conditions which do not entail substantial expenditures;

(iii) Permit conditions which will have to be met regardless of which party prevails at the evidentiary hearing;

(iv) Where the discharger proposed a less stringent level of treatment than that contained in the final permit, any permit conditions appropriate to meet the levels proposed by the discharger, if the measures required to attain such less stringent level of treatment are consistent with the measure required to attain the limits proposed by the Agency; and

(v) Construction activities such as segregation of waste streams or installation of equipment which would partially meet the final permit terms or conditions and could also be used to achieve the discharger's proposed alternative terms and conditions.

(7) If at any time after a hearing is granted and after the Regional Administrator's notice under paragraph (1), it becomes clear that a permit requirement is no longer contested, any party may request the Presiding Officer to issue an order identifying the requirements as uncontested. The requirement identified in such order shall become enforceable 30 days after the issuance of the order.

(f) Where an evidentiary hearing is granted under § 124.75 on an application for a renewal of an existing permit, all provisions of the existing permit, as well as uncontested provisions of the new permit, shall continue in full force and effect until final Agency action under § 124.101. (See § 122.12(b)). Upon written request from the applicant, the Regional Administrator may modify the existing permit to delete requirements which unnecessarily duplicate uncontested provisions of the new permit.

[*Comment:* The following examples demonstrate the application of § 124.61(e) and (f):

*Example 1:* The discharger requests and is granted an evidentiary hearing on its contention that the EPA's proposed effluent limitation for total suspended solids (TSS) at level X is too stringent and should be relaxed to level Y. Treatment technology A attains level Y whereas technology A plus B is necessary for level X. In this case, the discharger's obligation to install technology A is effective 30 days after service of the notice under § 124.75(b) and this obligation is not stayed by virtue of the contest as to the need for additional technology B. The discharger would be required to comply with all portions of the compliance schedule relating to design, construction and attainment of technology A, but would obtain a stay of such provisions with respect to technology B. This is true even if the schedule does not separate the two technologies. The discharger must of course also perform all basic work such as segregation of waste streams, site preparation, monitoring, reporting, and initial construction because this will be necessary regardless of the outcome of the contest. The additional obligations of technology B are stayed.

*Example 2:* The same facts as in Example 1 except that a public interest group has also requested and been granted participation in the evidentiary hearing. The group contends that TSS level X is too lenient and should be tightened to level Z. Treatment technology C, which is inconsistent with both A and B technologies, is required for level Z. In this case the discharger's obligation to install technologies A, A and B, or C are all stayed. The discharger's obligations to perform basic work such as segregation of waste streams, site preparation, monitoring, reporting, and perhaps initial construction are not stayed because they are unaffected by the contest.

*Example 3:* The discharger requests an evidentiary hearing on two issues: that the permits total suspended solids (TSS) limit and pH limit are each too strict. The Regional Administrator grants the evidentiary hearing on the TSS issue but denies it on the pH claim. The TSS and pH technologies are independent and severable and the discharger does not appeal the denial of hearing on the pH claim. In this case the discharger's obligation to install the pH control technology is not stayed and becomes effective 30 days after service of the Regional Administrator's notice under § 124.75(b). If the underlying technology for the TSS limit is at issue, the TSS limitation is stayed. However, as described in Examples 1 and 2, the discharger's obligations to perform all work unaffected by the stay (e.g., segregation of waste streams, site preparation, initial construction, etc.) are not stayed.

*Example 4:* The same facts as in Example 3 except that the equipment required for attaining the pH limit is achieved by the installation of the TSS equipment. In this case the Regional Administrator may determine that the pH permit term is inseverable from the TSS contest and thus the limits for both parameters would be stayed by virtue of the hearing on TSS, although as noted in the preceding examples, the discharger's obligations to perform all work unaffected by the stay are not stayed. Note however, that if the pH limit is achievable in an inexpensive and temporary alternative such as additional chemical treatment in the discharger's existing equipment, then the Regional Administrator may determine that the pH permit term is severale and refuse to stay the pH term.

*Example 5:* The same facts as in Example 3 except that the discharger appeals (to the Administrator) the Regional Administrator's denial of the evidentiary hearing on Issue No. 2 (the pH limit). In this case the pH limitation is also stayed (with the exceptions noted in the preceding examples) at least until the Administrator's decision on such appeal. If the Administrator affirms the denial of the evidentiary hearing on the pH limit then upon service of notice under § 124.75(b) the stay terminates. If the Administrator reverses and thus grants the evidentiary hearing on the pH term then the stay continues until final Agency action.

(g) When issuing a finally effective permit under Subpart I, the Regional Administrator shall extend the permit compliance schedule to the extent required by a stay under this section; provided that no such extension shall be granted which would:

(1) Result in the violation of an applicable statutory deadline; or

(2) Cause the permit to expire more than five years after issuance under § 124.61(a).

[*Comment:* Extensions of compliance schedules will not automatically be granted for a period equal to the period the stay is in effect for an effluent limitation. For example, if both the Agency and the discharger agree that a certain treatment technology is required by the Act where guidelines do not apply, but a hearing is granted to consider the effluent limitations which the technology will achieve, requirements regarding installation of the underlying technology will not be stayed during the hearing. Thus, unless the hearing extends beyond the final compliance date in the permit, it will not ordinarily be necessary to extend the compliance schedule. However, where application of an underlying technology is challenged, the stay for installation requirements relating to that technology would extend for the duration of the hearing.]

(h) For purposes of judicial review under section 509(b) of the Act, final administrative action on a permit does not occur unless and until a party has requested and exhausted its Administrative remedies under Subpart H and I and §124.101. Any party which neglects or fails to seek review under § 124.101 thereby waives its opportunity to exhaust available Agency remedies.

**§ 124.62 Final environmental impact statement.**

No final permit for a new source shall be issued until at least 30 days after the date of issuance of a final Environmental Impact Statement if one is required under 40 CFR § 6.916.

**§ 124.63 Response to comments.**

(a) At the time any final permit is issued, the Director shall also prepare a response to comments for that permit. This response to comments shall contain:

(1) A specific indication of which provisions of the draft permit have been changed in the final permit, and the reasons for the change; and

(2) A brief description of and response to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(b) For EPA-issued permits any documents cited in the response to

comments shall be included in the administrative record for the final permit as defined in § 124.64.

[*Comment:* If new points are raised or new material supplied during the public comment period, EPA may document its response to those matters by adding new material to the administrative record.]

**§ 124.64 Administrative record for final permit issued by EPA.**

(a) Decisions to issue a final permit under § 124.61 shall be made on the basis of the administrative record defined in this section.

(b) The administrative record for any final permit shall consist of the administrative record for the draft permit and

(1) All comments received during the public comment period required by § 124.42;

(2) The tape or transcript of any hearing(s) held under § 124.42;

(3) The response to comments required by § 124.63;

(4) Any final Environmental Impact Statement;

(5) Other documents contained in the supporting file for the permit, including correspondence, telephone and meeting memoranda, compliance reports, etc.; and

(6) The final permit.

These documents shall be added to the record as soon as feasible after their receipt or publication by the Agency.

(c)(1) This section applies to all final permits where the draft permit was subject to the administrative record requirements of § 124.35.

(2) Whether or not a draft permit was formulated or final permit was issued subject to this Subpart, the Regional Administrator, at any time prior to the rendering of an initial decision in an evidentiary hearing on that permit, may withdraw the permit in whole or in part and formulate a new draft permit under § 124.31 addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing, etc. as would apply to any other draft permit subject to this Part. Any portions of the permit which are not withdrawn and which are not stayed under § 124.61 shall remain in effect.

(d) Material readily available at the issuing Regional Office or published material which is generally available, and which is included in the administrative record under the standards of this section or of § 124.63 ("Response to Comments"), does not need to be physically included in the same file as the rest of the record as long as it is specifically referenced in the fact sheet or statement of basis or in the response to comments.

## Subpart H—Evidentiary Hearings for EPA-Issued Permits

**§ 124.71 Applicability.**

The regulations in this Subpart govern all evidentiary hearings conducted by EPA under section 402 of the Act, except as otherwise provided in Subpart I. An evidentiary hearing is available to challenge any permit issued under § 124.61 except for a general permit. Persons affected by a general permit may not challenge the terms and conditions of a general permit; but may instead apply for an individual permit under § 124.11 as authorized in § 122.48 and then request an evidentiary hearing on the issuance or denial of an individual permit.

**§ 124.72 Definitions.**

For the purpose of this Subpart H and I, the following definitions are applicable:

(a) "Judicial Officer" means a permanent or temporary employee of the Agency appointed as a Judicial Officer by the Administrator under these regulations and subject to the following conditions:

(1) A Judicial Officer shall be a licensed attorney. A Judicial Officer shall not be employed in the Office of Enforcement or the Office of Water and Waste Management, and shall not participate in the consideration or decision of any case in which he or she performed investigative or prosecutorial functions.

(2) The Administrator may delegate any authority to act in an appeal of a given case under this Subpart to a Judicial Officer who, in addition, may perform other duties for EPA, provided that that delegation shall not preclude a Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer decides referral would be appropriate. The Administrator, in deciding a case, may consult with and assign the drafting of preliminary findings of fact and conclusions and/or a preliminary decision to any Judicial Officer.

(b) "Party" means the EPA trial staff under § 124.78 and any person whose request for a hearing under § 124.74 or whose request to be admitted as a party or to intervene under §§ 124.79 or 124.117 has been granted.

(c) "Presiding Officer" means an Administrative Law Judge appointed under 5 U.S.C. § 3105 and designated to preside at the hearing.

(d) "Regional Hearing Clerk" means an employee of the Agency designated by a Regional Administrator to establish a repository for all books, records, documents and other materials relating to hearings under this Subpart. A Regional Hearing Clerk may be the same person as the Record Clerk required by § 124.35.

**§ 124.73 Filing and submission of documents.**

(a) All submissions authorized or required to be filed with EPA under this Subpart shall be filed with the Regional Hearing Clerk, unless the regulations provide otherwise. Submissions shall be considered filed on the date on which they are mailed or delivered in person to the Regional Hearing Clerk.

(b) All such submissions shall be signed by the person making the submission, or by an attorney or other authorized agent or representative.

(c)(1) All data and information referred to or in any way relied upon in any such submissions shall be included in full and may not be incorporated by reference, unless previously submitted as part of the administrative record in the same proceeding, except for State or Federal statutes and regulations, judicial decisions published in a national reporter system, officially issued EPA documents of general applicability, and any other material which is generally available or of peripheral relevance, in which case the party relying on it shall file a written undertaking to make copies available as directed by the Regional Administrator or the Presiding Officer.

(2) If any part of the material submitted is in a foreign language, it shall be accompanied by an English translation verified under oath to be complete and accurate, together with the name, address, and a brief statement of the qualifications of the person making the translation. Translations of literature or other material in a foreign language shall be accompanied by copies of the original publication.

(3) Where relevant data or information is contained in a document also containing irrelevant matter, either the irrelevant matter shall be deleted and only the relevant data or information shall be submitted or the relevant portions shall be briefly indicated.

(4) The failure to comply with the requirements of this section or any other requirement in this Subpart may result in the exclusion from consideration of any portion of the submission which

fails to comply. If the Regional Administrator or the Presiding Officer, on motion by any party or *sua sponte*, determines that a submission fails to meet any requirement of this Subpart, the Regional Administrator or Presiding Officer shall direct the Hearing Clerk to return the submission with a copy of the applicable regulations indicating those provisions not complied with in the submission. The party proposing to submit any materials previously rejected shall have 14 days to correct the errors and resubmit, unless the Regional Administrator or the Presiding Officer determines that there is good cause to allow a longer time.

(d) The filing of a submission shall not mean or imply that it in fact meets all applicable requirements or that it contains reasonable grounds for the action requested or that the action requested is in accordance with law.

(e) The original of all statements and documents containing factual material, data, or other information shall be signed in ink and shall state the name, address and the representative capacity of the person making the submission. The person signing shall comply with the signature and certification procedures of § 122.5.

**§ 124.74 Requests for evidentiary hearing.**

(a) Within 30 days following the service of notice of the Regional Administrator's issuance of a final permit under § 124.61, any interested person may submit a request to the Regional Administrator under paragraph (b) for an evidentiary hearing to reconsider or contest the terms of that permit. If such a request is submitted by a person other than the permittee, the person shall simultaneously serve a copy of the request on the permittee.

(b) In accordance with § 124.76, such requests shall state each legal or factual question alleged to be at issue, and their relevance to the permit decision, together with a designation of the specific factual areas to be adjudicated and the hearing time estimated to be necessary for that adjudication. Information supporting the request or other written document relied upon to support the request shall be submitted as required by § 124.73 unless it is already in the administrative record required by § 124.64.

[*Comment:* This paragraph allows the submission of requests for evidentiary hearings even though both legal and factual issues may be raised, or only legal issues may be raised. In the latter case, because no factual issues were raised, the Regional Administrator would be required to deny the request. However, on review of the denial, the Administrator is authorized by § 124.101(a)(1) to review policy or legal conclusions of the Regional Administrator. EPA is requiring an appeal to the Administrator even of purely legal issues involved in a permit decision to ensure that the Administrator will have an opportunity to review any permit before it will be final and subject to judicial review.]

(c) Such requests shall also contain:

(1) The name, mailing address and telephone number of the person making such request;

(2) A clear and concise factual statement of the nature and scope of the interest of the requester;

(3) The names and addresses of all persons whom the requester represents; and

(4) A statement by the requester that, upon motion of any party, or *sua sponte* by the Presiding Officer and without cost or expense to any other party, the requester shall make available to appear and testify, the following:

(i) The requester;

(ii) All persons represented by the requester; and

(iii) All officers, directors, employees, consultants and agents of the requester and the persons represented by the requester.

(5) Specific references to the contested permit terms and conditions, as well as suggested revised or alternative permit terms and conditions (not excluding permit denial) which, in the judgment of the requester, would be required to implement the purposes and policies of the Act.

(6) In the case of challenges to the application of control or treatment technologies identified in the statement of basis or fact sheet, identification of the basis for the objection, and the alternative technologies or combination of technologies which the requester believes are necessary to meet the requirements of the Act.

(7) Specific identification of each of the discharger's obligations which should be stayed if the request is granted. If the request contests more than one permit term or condition then each obligation which is proposed to be stayed must be referenced to the particular contested term warranting the stay.

(d) The Regional Administrator (upon notice to all persons who have already submitted hearing requests) may extend the time allowed for submitting hearing requests under this section for good cause.

**§ 124.75 Decision on request for a hearing.**

(a) Following the expiration of the time allowed by § 124.74 for submitting a request for an evidentiary hearing, the Regional Administrator shall determine whether the request shall be granted, denied or granted in part and denied in part. The Regional Administrator shall grant a request either in whole or in part only if the request conforms to the requirements of § 124.74 and sets forth material issues of fact relevant to the issuance of the permit.

(b) If the Regional Administrator grants a request for an evidentiary hearing, in whole or in part, the Regional Administrator shall state and identify the permit terms and conditions which have been contested by the requester and for which the evidentiary hearing has been granted. Permit terms and conditions which are not contested or for which the Regional Administrator has denied the hearing request shall not be affected by or considered at, the evidentiary hearing. The Regional Administrator shall specify these terms and conditions in writing and serve notice in accordance with § 124.61(e).

(c) If the Regional Administrator grants a request for an evidentiary hearing in whole or in part, in regard to a particular proposed permit, then any other request for an evidentiary hearing in regard to that permit shall be treated as a request to be a party and the Regional Administrator shall grant any such request which meets the requirements of paragraph (a) of this section.

(d) If a request for a hearing is denied in whole or in part, the Regional Administrator shall briefly state the reasons. That denial is then subject to review by the Administrator under § 124.101.

**§ 124.76 Obligation to raise issues and submit evidence before a final permit is issued.**

No evidence shall be submitted by any party to a hearing under this Subpart that was not submitted to the administrative record required by § 124.64 unless good cause is shown for the failure to submit it. No issues shall be raised by any such party that were not submitted to the administrative record required by § 124.64 unless good cause is shown for the failure to submit them. Good cause includes the case where the party seeking to raise the new issues, or introduce new information, shows that it could not reasonably have ascertained the issues or made the information available within the time required by § 124.43.

**§ 124.77 Notice of the grant of a hearing.**

Public notice of the grant of an evidentiary hearing regarding a permit shall be given as provided in § 124.41(h) and in addition by mailing a copy to all persons who commented on the draft permit or submitted a request for a hearing. Before the issuance of such notice the Regional Administrator shall designate the Agency trial staff and the members of the decisional body (as defined in § 124.78).

**§ 124.78 Ex parte communications.**

(a)(1) No interested person outside the Agency or member of the Agency trial staff shall make or knowingly cause to be made to any members of the decisional body an *ex parte* communication relevant to the merits of the proceedings.

(2) No member of the decisional body shall make or knowingly cause to be made to any interested person outside the Agency or member of the Agency trial staff an *ex parte* communication relevant to the merits of the proceedings.

(3) A member of the decisional body who receives or who makes or knowingly causes to be made a communication prohibited by this subsection shall file with the Regional Hearing Clerk, for the public record of the hearing, all such written communications or memoranda stating the substance of all such oral communications together with all written responses and memoranda stating the substance of all oral responses.

(b) Upon receipt by any members of the decision making body of an *ex parte* communication knowingly made or knowingly caused to be made by a party in violation of this section, the person presiding at the stage of the hearing then in progress may, to the extent consistent with justice and the policy of the Act require the party to show cause why its claim or interest in the proceedings should not be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(c) The prohibitions of this section begins to apply upon issuance of the notice of the grant of a hearing under § 124.77 or § 124.116. This prohibition terminates at the date of final Agency action.

(d) For purposes of this section, the following definitions shall apply:

(1) "Agency trial staff" means those Agency employees, whether temporary or permanent, who have been designated by the Agency under § 124.77 or § 124.116 as available to investigate, litigate and present the evidence, arguments and position of the Agency in the evidentiary hearing or non-adversary initial licensing hearing. Appearance as a witness does not necssarily require a person to be designated as a member of the Agency trial staff;

(2) "Decisional body" means any Agency employee who is or may reasonably be expected to be involved in the decisional process of the proceeding including the Administrator, Judicial Officer, Presiding Officer, the Regional Administrator (if he does not designate himself as a member of the Agency trial staff) and any of their direct support staff participating in the decisional process. In the case of a nonadversary initial licensing proceeding, the decisional body shall also include the panel members whether or not permanently employed by the Agency;

(3) "*Ex parte* communication" means any communication written or oral relating to the merits of the proceeding between the decisional body and an interested person outside the Agency or the Agency trial staff where such communication was not originally filed or stated in the administrative record or in the hearing. *Ex parte* communications do not include:

(i) Communications between Agency employees other than between the Agency trial staff and the members of the decisional body;

(ii) Discussions between the decisional body and either

(A) Interested persons outside the Agency; or

(B) The Agency trial staff;

*If* all parties have received prior written notice of such proposed communications and have been given the opportunity to be present and participate therein.

(iii) Communications between Agency employees including trial staff but not the decisional body and any persons outside the Agency including interested persons outside the Agency.

(4) "Interested person outside the Agency" includes the permit applicant, any person who filed written comments in the proceeding, any person who requested the hearing, any person who requested to participate or intervene in the hearing, any participant or party in the hearing and the attorney of record for such persons.

**§ 124.79 Additional parties and issues.**

(a) Any person may submit a request to be admitted as a party within 15 days after the date of mailing, publication or posting of notice of the grant of an evidentiary hearing, whichever occurs last. The Presiding Officer shall grant such requests as meet the requirements of § 124.74 and § 124.76. Such request must specifically identify those issues already raised which the requester seeks to address at the hearing.

(b) After the expiration of the time prescribed in paragraph (a) any person may file a motion for leave to intervene as a party. This motion must meet the requirements of §§ 124.74 and 124.76 and set forth the grounds for the proposed intervention provided, however, that no factual or legal issues in addition to those raised by timely hearing requests may be proposed except for good cause. Any motion to intervene must also contain a verified statement showing good cause for the failure to file a timely request to be admitted as a party. The Regional Administrator, or the Presiding Officer if one has been assigned, shall grant such motion only upon an express finding on the record that:

(1) Extraordinary circumstances justify granting the motion;

(2) The intervener has consented to be bound by:

(i) Prior written agreements and stipulations by and between the existing parties; and

(ii) All orders previously entered in the proceedings; and

(3) Intervention will not cause undue delay or prejudice the rights of the existing parties.

**§ 124.80 Filing and service.**

(a) An original and one (1) copy of all written submissions relating to an evidentiary hearing filed after the notice of hearing is published shall be filed with the Regional Hearing Clerk.

(b) The party filing any submission shall serve a copy of such submission upon the Presiding Officer and each party of record. Service shall be by mail or personal delivery.

(c) Every submission shall be accompanied by an acknowledgement of service by the person served or proof of service in the form of a statement of the date, place, time, and manner of service and the names of the persons served, certified by the person who made service.

[*Comment:* A signed statement that an attached list of persons were mailed the submission is sufficient to meet the requirements of this paragraph. Certified mail is not required.]

(d) The Regional Hearing Clerk shall maintain and furnish to any person upon request, a list containing the name, service address and telephone number of all parties and their attorneys or duly authorized representatives.

**§ 124.81 Assignment of administrative law judge.**

No later than the date of mailing, publication or posting of the notice of a grant of an evidentiary hearing, whichever occurs last, the Regional Administrator shall refer the proceeding to the Chief Administrative Law Judge who shall make an assignment of an Administrative Law Judge to serve as Presiding Officer for the hearing.

**§ 124.82 Consolidation and severance.**

(a) The Administrator, Regional Administrator or Presiding Officer, has the discretion to consolidate, in whole or in part, two or more proceedings to be held under this Subpart, whenever it appears that a joint hearing on any or all of the matters in issue would expedite or simplify consideration of the issues and that no party would be prejudiced thereby. Consolidation shall not affect the right of any party to raise issues that might have been raised had there been no consolidation.

(b) If the Presiding Officer determines consolidation is not conducive to an expeditious, full and fair hearing, any party or issues may be severed and heard separately.

**§ 124.83 Prehearing conferences.**

(a) The Presiding Officer, *sua sponte*, or at the request of any party, may direct the parties or their attorneys or duly authorized representatives to appear at a specified time and place for one or more conferences before or during a hearing, or to submit written proposals or correspond for the purpose of considering any of the matters set forth in paragraph (c) of this section.

(b) The Presiding Officer shall allow a reasonable period before the hearing begins for the orderly completion of all prehearing procedures and for the submission and disposition of all prehearing motions. Where the circumstances warrant, the Presiding Officer shall call a prehearing conference to inquire into the use of available procedures contemplated by the parties and the time required for their completion, to establish a schedule for their completion, and to set a tentative date for beginning the hearing.

(c) In conferences held, or in suggestions submitted, under paragraph (a), the following matters may be considered:

(1) The necessity or desirability of simplification, clarification, amplification or limitation of the issues.

(2) The admission of facts and of the genuineness of documents, and the possibility of stipulations with respect to facts.

(3) The consideration of and ruling upon objections to the introduction into evidence at the hearing of any written testimony, documents, papers, exhibits, or other submissions proposed by a party, except that the administrative record required by § 124.64 shall be received in evidence subject to the provisions of § 124.85(d)(2). Notwithstanding the foregoing, at any time before the end of the hearing any party may make, and the Presiding Officer shall consider and rule upon, motions to strike testimony or other evidence other than the administrative record on the grounds of relevance, competency or materiality.

(4) The identification of matters of which official notice may be taken.

(5) The establishment of a schedule which includes definite or tentative times for as many of the following as are deemed necessary and proper by the Presiding Officer:

(i) The submission of narrative statements of position on each factual issue in controversy;

(ii) The submission of written testimony and documentary evidence (e.g., affidavits, data, studies, reports and any other type of written material) in support of such statements; or

(iii) Written requests to any party for the production of additional documentation, data, or other information relevant and material to the facts in issue.

(6) The grouping of participants with substantially like interests for purposes of eliminating duplicative or repetitive development of the evidence and making and arguing motions and objections.

(7) Such other matters as may expedite the hearing or aid in the disposition of the matter.

(d) At a prehearing conference or within some reasonable time set by the Presiding Officer, each party shall make available to all other parties the names of experts and other witnesses it expects to call. At its discretion or at the request of the Presiding Officer, a party may include a brief narrative summary of any witness's anticipated testimony. Copies of any written testimony, documents, papers, exhibits, or materials which a party expects to introduce into evidence, and the administrative record required by § 124.64, shall be marked for identification as ordered by the Presiding Officer. Witnesses, proposed written testimony and other evidence may be added or amended only upon a finding by the Presiding Officer that good cause existed for failure to introduce the additional or amended material within the time specified by the Presiding Officer. Agency employees and consultants shall be made available as witnesses by the Agency to the same extent that production of such witnesses is required of other parties under § 124.74(c)(4). (See also § 124.85(b)(16)).

(e) The Presiding Officer shall prepare a written prehearing order reciting the actions taken at the prehearing conference and setting forth the schedule for the hearing, unless a transcript has been taken and accurately reflects these matters. The order shall include a written statement of the areas of factual agreement and disagreement and of the methods and procedures to be used in developing the evidence and the respective duties of the parties in connection therewith. This order shall control the subsequent course of the hearing unless modified by the Presiding Officer for good cause shown.

**§ 124.84 Summary determination.**

(a) Any party to an evidentiary hearing may move with or without supporting affidavits and briefs for a summary determination in his or her favor upon all or any part of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. Any such motion shall be filed at least 45 days before the date set for the hearing, except that upon good cause shown such motion may be filed at any time before the close of the hearing.

(b) Any other party may, within 30 days after service of the motion, file and serve a response to it or a counter-motion for summary determination. When a motion for summary determination is made and supported, a party opposing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the Presiding Officer, that there is a genuine issue of material fact for determination at the hearing.

(c) Affidavits shall be made on personal knowledge, shall set forth facts that would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(d) The Presiding Officer has the discretion to set the matter for oral argument and call for the submission of proposed findings, conclusions, briefs or memoranda of law. The Presiding Officer shall rule on the motion not more than 30 days after the date responses to the motion are filed under paragraph (b) of this section.

(e) If all issues of material fact are decided on a motion for summary determination, no hearing will be held and the Presiding Officer shall thereupon prepare an initial decison under § 124.89. If the motion for summary determination is denied or if only a partial summary determination is granted, the Presiding Officer shall issue a memorandum opinion, and order, interlocutory in character, and the hearing will proceed on the remaining issues. Appeals from interlocutory rulings are governed by § 124.90.

**§ 124.85 Hearing procedure.**

(a)(1) The permit applicant always bears the burden of persuading the Agency that a permit authorizing pollutants to be discharged should be issued and not denied. This burden does not shift.

(2) The Agency has the burden of going forward to present an affirmative case in support of any challenged term or condition of a final permit.

[*Comment:* In many cases the documents contained in the administrative record, in particular the fact sheet or statement of basis and the response to comments should adequately discharge this burden.]

(3) Any hearing participant who, by raising material issues of fact, contends:

(i) That particular terms, conditions or requirements in the permit are improper or invalid, and who desires either:

(A) The inclusion of new or different terms, conditions or requirements; or

(B) The deletion of such terms, conditions or requirements; or

(ii) That the denial or issuance of a permit is improper or invalid, shall have the burden of going forward to present an affirmative case upon the issues.

(b) The Presiding Officer shall have the authority and duty to conduct a fair and impartial hearing, to take action to avoid unnecessary delay in the disposition of the proceedings, to maintain order and all powers necessary to these ends, including the power to:

(1) Establish the date, time and place of hearings and conferences;

(2) Establish the methods and procedures to be used in the development of the evidence;

(3) Prepare, after considering the views of the participants, written statements of areas of factual disagreement among the participants;

(4) Hold conferences to settle, simplify, determine or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;

(5) Administer oaths and affirmations;

(6) Regulate the course of the hearing and govern the conduct of participants;

(7) Examine witnesses;

(8) Identify and refer issues for interlocutory decision under § 124.90;

(9) Rule on, admit, exclude, or limit evidence;

(10) Establish the time for filing motions, testimony and other written evidence, briefs, findings, and other submissions;

(11) Rule on motions and other procedural matters pending before him, including but not limited to motions for summary determination in accordance with § 124.84;

(12) Order that the hearing be conducted in stages in cases where the number of parties is large or the issues are numerous and complex;

(13) Take any action not inconsistent with the provisions of this subpart for the maintenance of order at the hearing and for the expeditious, fair and impartial conduct of the proceeding;

(14) Provide for the testimony of opposing witnesses to be heard simultaneously or for such witnesses to meet outside the hearing to resolve or isolate issues or conflicts;

(15) Order that trade secrets be treated as confidential business information in accordance with § 124.131; and

(16) Allow such cross-examination as may be required for a full and true disclosure of the facts. No cross-examination shall be permitted on questions of law or policy, or regarding matters (such as the validity of effluent limitations guidelines) that are not subject to challenge in an NPDES proceeding. No Agency witnesses shall be required to testify or be made available for cross-examination on such matters. In determining whether cross-examination shall be permitted the Presiding Officer shall consider whether it is likely to result in clarifying or resolving a disputed issue of fact material to the decision, and whether the issue can be more economically clarified in other ways. The party seeking cross-examination has the burden of demonstrating that this standard has been met.

(c) All direct and rebuttal evidence at an evidentiary hearing shall be submitted in written form, unless, upon motion and good cause shown, the Presiding Officer determines that oral presentation of the evidence on any particular fact will materially assist in the efficient identification and clarification of the hearing issues. Written testimony shall be prepared in narrative form. To the extent that testimony is to be submitted in writing, the Presiding Officer may set dates for the filing of such evidence with the Regional Hearing Clerk as follows:

(1) The participant with the burden of going forward to present an affirmative case upon an issue (as defined in § 124.85(a) of these regulations) shall file direct testimony first.

(2) All participants other than the participants specified in the preceding subsection shall file their direct testimony on said issue not later than 20 days after the date of the filing of the testimony under the preceding subsection.

(3) All rebuttal testimony shall be filed no later than 30 days after the date of the filing of testimony under paragraph (c)(1) of this section.

(d)(1) The Presiding Officer shall admit all relevant, competent and material evidence, except evidence that is unduly repetitious. Evidence may be received at any hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value.

(2) The administrative record defined by § 124.64 shall be admitted and received in evidence. Any party may move that a sponsoring witness be provided for a portion or portions of the administrative record. The Presiding Officer, upon finding that the standards for cross-examination of § 124.85(b)(3) have been met and that the administrative record taken as a whole indicates legitimate doubt about such portion of the record, shall grant such motion and direct the appropriate party to produce such witness. If a sponsoring witness cannot be provided, the Presiding Officer may reduce the weight afforded the appropriate portion of the record as a factual statement accordingly.

[*Comment:* Receiving the administrative record into evidence automatically serves several purposes: (1) It documents the prior course of the proceeding; (2) it provides a record of the views of affected persons for consideration by the agency decisionmaker; and (3) it provides factual material for use by the decisionmaker. Subject to § 124.76, parties are free to contest the factual portions of the administrative record in the hearing, and to argue that portions of it should not be given weight unless sponsored by a witness who will be available for cross-examination.]

(3) Whenever any evidence or testimony is excluded by the Presiding Officer as inadmissible, all such evidence or testimony existing in written form shall remain a part of the record as an offer of proof. The party seeking the admission of oral testimony

may make an offer of proof, which shall consist of a brief statement on the record describing the testimony excluded.

(4) Where two or more parties have substantially similar interest and positions, the Presiding Officer may limit the number of attorneys or other party representatives who will be permitted to cross-examine and to make and argue motions and objections on behalf of such parties. Attorneys may, however, engage in cross-examination relevant to matters not adequately covered by previous cross-examination.

(5) Rulings of the Presiding Officer on the admissibility of evidence or testimony, the propriety of cross-examination, and other procedural matters shall appear in the record and shall control further proceedings, unless reversed as a result of an interlocutory appeal taken under § 124.90.

(6) All objections shall be made promptly or be deemed waived. Parties shall be presumed to have taken exception to an adverse ruling. No objection shall be deemed waived by further participation in the hearing.

(e) Parties may at any time stipulate to relevant facts or to settlement. However, all settlements to which the Agency is a party must be approved by the EPA Deputy Assistant Administrator for Water Enforcement in accordance with § 124.133.

**§ 124.86 Motions.**

(a) Any party may make a motion, (including a motion to dismiss a particular claim or a contested issue), to the Presiding Officer about any matter relating to the proceeding. All motions shall be filed and served as provided in § 124.80 except those made on the record during an oral hearing before the Presiding Officer.

(b) Within 10 days after service of any written motion, any party to the proceeding may file a response to the motion. The time for response may be shortened to three days or extended for an additional ten days by the Presiding Officer for good cause shown.

(c) Notwithstanding § 122.15, any party may file with the Presiding Officer a motion seeking to apply to the permit any regulatory or statutory requirement issued or made available after the issuance of the permit under § 124.61. The Presiding Officer shall grant any motion to apply a new statutory requirement unless he or she finds it contrary to legislative intent. The Presiding Officer may grant a motion to apply a new regulatory requirement where appropriate to carry out the purposes of the Act, and where no party would be unduly prejudiced thereby.

**§ 124.87 Record of hearings.**

(a) All orders issued by the Presiding Officer, transcripts of oral hearings or arguments, written statements of position, written direct and rebuttal testimony, and any other data, studies, reports, documentation, information and other written material of any kind submitted in the proceeding shall be a part of the record of the hearing, and shall be available except as provided in § 124.131 to the public in the office of the Regional Hearing Clerk promptly upon receipt in that office.

(b) Evidentiary hearings shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed. After the hearing, the reporter shall file with the Regional Hearing Clerk (i) the original of the transcript, and (ii) the exhibits received or offered into evidence at the hearing.

(c) The Regional Hearing Clerk shall promptly notify each of the parties of the filing of the certified transcript of proceedings. Any party who desires a copy of the transcript of the hearing may obtain a copy of the hearing transcript from the Regional Hearing Clerk upon payment of costs.

(d) The Presiding Officer shall allow witnesses, parties, and their counsel an opportunity to submit such written proposed corrections of the transcript of any oral testimony taken at the hearing, pointing out errors that may have been made in transcribing the testimony, as are required to make the transcript conform to the testimony. Except in unusual cases, no more than thirty days shall be allowed for submitting such corrections from the day a complete transcript of the hearing becomes available.

**§ 124.88 Proposed findings of fact and conclusions; brief.**

Within 45 days after the certified transcript is filed, any party may file with the Regional Hearing Clerk proposed findings of fact and conclusions and a brief in support thereof, each containing appropriate reference to the record. A copy of any such findings, conclusions and brief shall be contemporaneously served upon every other party and the Presiding Officer. The Presiding Officer, for good cause shown, may extend the time for filing the proposed findings and conclusions and/or the brief. The Presiding Officer may allow reply briefs.

**§ 124.89 Decisions.**

(a) The Presiding Officer shall review and evaluate the record, including the proposed findings and conclusions, any briefs filed by the parties and any interlocutory decisions pursuant to § 124.90 and shall issue and file his initial decision with the Regional Hearing Clerk. The Regional Hearing Clerk shall immediately serve copies of the initial decision upon all parties (or their counsel of record) and the Administrator.

(b) The initial decision of the Presiding Officer shall automatically become effective thirty (30) days after its service unless within such time:

(1) A party files a petition for review by the Administrator pursuant to § 124.101; or

(2) The Administrator *sua sponte* files a notice that he or she will review the decision pursuant to § 124.101.

**§ 124.90 Interlocutory appeal.**

(a) Except as provided in this section, appeals to the Administrator may be taken only under § 124.101. Appeals from orders or rulings may be taken under this section only if the Presiding Officer, upon motion of a party, certifies those orders or rulings to the Administrator for appeal on the record. Requests to the Presiding Officer for certification must be filed in writing within ten days of service of notice of the order, ruling, or decision and shall state briefly the grounds relied on.

(b) The Presiding Officer may certify an order or ruling for appeal to the Administrator if:

(1) The order or ruling involves an important question on which there is substantial ground for difference of opinion; and

(2) Either:

(i) An immediate appeal of the order or ruling will materially advance the ultimate completion of the proceeding, or,

(ii) A review after the final order is issued will be inadequate or ineffective; and,

(3) Such an appeal is necessary to prevent exceptional delay, expense or prejudice to any party.

(c) To the extent an appeal under this section involves issues of law, the Administrator shall refer those issues to the General Counsel for determination subject to his or her approval.

(d) If the Administrator decides that certification was improperly granted, he or she shall decline to hear the appeal. The Administrator shall accept or decline all interlocutory appeals within 30 days of their submission; if the Administrator takes no action within

that time, the appeal shall be considered dismissed. When the Presiding Officer declines to certify an order or ruling to the Administrator for an interlocutory appeal, it may be reviewed by the Administrator only upon appeal from the initial decision of the Presiding Officer, except when the Administrator determines upon motion of a party and in exceptional circumstances, that to delay review would not be in the public interest. Such motion shall be made within five days after receipt of notification that the Presiding Officer has refused to certify an order or ruling forr interlocutory appeal to the Administrator. Ordinarily, the interlocutory appeal will be decided on the basis of the submissions made to the Presiding Officer. The Administrator may, however, allow briefs and oral argument.

(e) The Presiding Officer may stay the proceeding pending a decision by the Administrator upon an order or ruling certified by the Presiding Officer for an interlocutory appeal, or upon the denial of such certification by the Presiding Officer. Only in exceptional circumstances shall proceedings be stayed.

(f) The failure to request an interlocutory appeal shall not foreclose a party from taking exception to an order or ruling in an appeal under § 124.101.

**§ 124.101 Appeal to the Administrator.**

(a)(1) Within 30 days after service of an initial decision, or the denial in whole or in part of a request for an evidentiary hearing, any party or requester, as the case may be, may appeal any matter set forth in such initial decision or denial or in any adverse order or ruling to which the party objected during the hearing, by filing with the Administrator notice of appeal and a petition for review. Proof of service upon all parties shall accompany such filing. The petition shall include a statement of the supporting reasons for such exceptions and, where appropriate, a showing that the initial decision contains:

(i) A finding of fact or conclusion of law which is clearly erroneous, or

(ii) An exercise of discretion or policy which is important and which the Administrator should, in his discretion, review.

(2) Within 15 days after service of a petition for review under paragraph (a)(1), any other party to the hearing in question may file a responsive petition.

(3) Policy or legal conclusions made in the course of denying a request for an evidentiary hearing may be reviewed and changed by the Administrator in an appeal under this section.

(b) Within 30 day of an initial decision or denial of an evidentiary hearing the Administrator may, *sua sponte*, review such decision. Within seven (7) days after the Administrator has decided under this section to review an initial decision or the denial of an evidentiary hearing, notice of that decision shall be served by mail upon all affected parties and the Regional Administrator.

(c) Within a reasonable time following the filing of the petition for review, the Administrator shall issue an order either granting or denying the petition for review. When the Administrator grants a petition for review or determines under paragraph (b) to review a decision, the Administrator may notify the parties that only certain issues shall be briefed.

(d) Notwithstanding the grant of a petition for review or a determination under paragraph (b) to review a decision, the Administrator may summarily affirm without opinion an intitial decision or the denial of an evidentiary hearing.

(e) To the extent an appeal under this section involves issues of the law, the Administrator shall refer those issues to the General Counsel for determination subject to his or her approval.

(f) A petition to the Administrator under paragraph (a) for review of any initial decision or the denial of an evidentiary hearing is, under 5 U.S.C. § 704, a prerequisite to the seeking of judicial review of the final decision of the Agency.

(g)(1) If a party timely files a petition for review or if the Administrator *sua sponte* orders review, then, for purpose of judicial review under section 509(b) of the Act, final Agency action on an issue occurs after EPA review procedures are exhausted and the Administrator's decision is issued and is implemented as follows:

(i) If the Administrator denies review or summarily affirms without opinion as provided in § 124.101(d) then the initial decision or denial becomes effective upon the service of notice of such decision.

(ii) If the Administrator issues a decision without remanding the proceeding then the final permit, redrafted as required by the Administrator's decision, shall be reissued and served upon all parties to such appeal in accordance with paragraph (g)(2) of this section.

(iii) If the Administrator issues a decision remanding the proceeding then final Agency action occurs upon completion of the remanded proceeding, including any Administrator appeals to the Administrator therefrom.

(2) For purposes of judicial review under section 509(b) of the Act, final Agency action occurs ten days after a final permit is issued. After Agency review procedures are exhausted a final permit shall be prepared and issued by the Regional Administrator:

(i) When the Administrator issues notice to the parties that review has been denied if review is denied;

(ii) When the Administrator issues a decision if review is not denied and the Administrator does not remand the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded unless the Administrator's remand order specifically provides that appeal of the remand decision will be required in order to exhaust administrative remedies.

(h) The petitioner may file a brief in support of the petition within 21 days after the Administrator has granted a petition for review. Any other party may file a responsive brief within 21 days of service of a brief in support of the petition. The petitioner may file a reply brief within 14 days of service of the responsive brief and any person may file an *amicus* brief for the consideration of the Administrator. If the Administrator determines, *sua sponte*, to review an initial Regional Administrator's decision or the denial of an evidentiary hearing, the Administrator shall notify the parties of the briefing schedule.

(i) Review by the Administrator of an initial decision or the denial of an evidentiary hearing shall be limited to issues specified under paragraph (a) of this section, except after notice to all parties, the Administrator may raise and decide other matters which he or she considers material on the basis of the record.

## Subpart I—Non-Adversary Procedures for Initial Licensing

**§ 124.111 Applicability.**

(a) Except as set forth in this Subpart, this Subpart applies in lieu of, and to the complete exclusion of, Subparts E through H in the following cases:

(1) In all proceedings for the issuance of a modified permit under section 301(h) of the Act, except that in such proceedings the terms "Administrator or a person designated by the Administrator" shall be substituted in this Subpart for the term "Regional Administrator"; and

(2) In any proceedings for the issuance of any other permit which constitutes "initial licensing" under the

Administrative Procedure Act, where the Regional Administrator elects to apply this Subpart and explicitly so states in the public notice of the draft permit.

(b) The parties to an evidentiary hearing that would otherwise be held under Subpart H may agree to conduct that hearing in accordance with this Subpart. Any applicant for an NPDES permit which is not an initial license may request, when requesting an evidentiary hearing under § 124.74, that its application be processed under the procedures of this Subpart. If the Regional Administrator agrees with this request, and if a hearing is granted, the notice of the hearing shall be issued under § 124.116 shall include a statement that the permit will be processed under the procedures set forth in this Subpart unless a written objection is received within 30 days. If no such objection is received, the application shall be processed in accordance with §§ 124.117–124.121 of this Subpart, except that any reference to a draft permit shall be taken as referring to the final permit. If an objection is received, Subparts F through H shall be applied instead.

(c) "Initial licensing" includes both the first grant of an NPDES permit to a discharger that has not previously held an NPDES permit and the first decision on any variance applied for by a discharger.

**§ 124.112 Relation to other subparts.**

The following provisions of Subparts E through H apply to proceedings under this Subpart:

(a) § 124.54 "Terms requested by the Corps of Engineers and other Government Agencies."

(b) § 124.62 "Final environmental impact statement."

(c) § 124.65 "Early decision on certain permit conditions."

(d) § 124.66 "Deferral of decision on certain permit conditions."

(e) § 124.72 "Definitions."

(f) § 124.73 "Filing."

(g) § 124.78 *"Ex parte* communications."

(h) § 124.80 "Filing and service."

(i) § 124.82 "Consolidation and severance."

(j) § 124.85(a) (burden of proof);

(k) § 124.86 "Motions."

(l) § 124.87 "Record of hearings."

(m) § 124.90 "Interlocutory appeal."

**§ 124.113 Public notice regarding draft permits and permit conditions.**

Public notice of the formulation of a draft permit under this Subpart shall be given as provided in § 124.41(i). At the discretion of the Regional Administrator, the comment period specified in this notice may include an opportunity for a public hearing under § 124.42.

**§ 124.114 Hearings.**

(a) By the close of the comment period set forth in § 124.113 (§ 124.41(i)), any person may request the Regional Administrator to hold a panel hearing on the draft permit by submitting a written request containing the following:

(1) A brief statement of the interest of the person requesting the hearing;

(2) A statement of any objections to the draft permit;

(3) A statement of the issues which such person proposes to raise for consideration at such hearing; and

(4) Statements meeting the requirements of § 124.74(c)(1)–(5).

(b) Whenever (1) a written request satisfying the requirements of paragraph (a) of this section has been received and presents genuine issues of material fact, or (2) the Regional Administrator determines *sua sponte* that a hearing under this Subpart is necessary or appropriate, the Regional Administrator shall serve written notice of the determination on each person requesting such hearing and the applicant, and shall provide public notice of the determination in accordance with § 124.41(j). If the Regional Administrator determines that a request filed under paragraph (a) of this section does not comply with the requirements of paragraph (a) or does not present genuine issues of fact, the Regional Administrator may deny the request for the hearing and shall serve written notice of such determination on all persons requesting the hearing.

(c) The Regional Administrator may decide before a draft permit is formulated that a hearing should be held under this Part. In such a case the notice issued under § 124.113 shall so state and shall contain the information required by § 124.41(j).

**§ 124.115 Effect of denial or absence of request for hearing.**

If no request for a hearing is made under § 124.114, or if all such requests are denied under that section, the draft permit shall be treated procedurally as if it were a recommended decision issued under § 124.124 of this Subpart, except that for purposes of § 124.125 and § 124.126 the term "hearing participant" or "person who participated in the hearing" shall be construed to mean the applicant and any person who submitted comments under § 124.41(i)

**§ 124.116 Notice of hearing.**

Upon granting a request for a hearing under § 124.114 the Regional Administrator shall promptly publish a notice of the hearing as required under § 124.41(j). The mailed notice shall include a statement which indicates whether the Presiding Officer or the Regional Administrator will issue the recommended decision.

**§ 124.117 Request to participate in hearing.**

(a) Each person desiring to participate in any hearing noticed under this section, shall file a motion to participate with the Regional Hearing Clerk by the deadline set forth in the notice of the grant of the hearing. The request shall include:

(1) A brief statement of the interest of the person in the proceeding;

(2) A brief outline of the points to be addressed;

(3) An estimate of the time required; and

(4) Statements meeting the requirements of § 124.74(c)(1)–(5).

(5) If the request is submitted by an organization, a non-binding list of the persons to take part in the presentation.

(b) As soon as practicable, but in no event later than two weeks before the scheduled date of the hearing, the Presiding Officer shall make a hearing schedule available to the public and shall mail it to each person who requested to participate in the hearing.

**§ 124.118 Submission of written comments on draft permit.**

(a) No later than 30 days before the scheduled start of the hearing (or such other date as may be set forth in the notice of hearing), each party shall file all of its comments on the draft permit, based on information in the administrative record and any other information which is or reasonably could have been available to that person. All comments shall include any affidavits, studies, data, tests, or other materials relied upon for making any factual statements in the comments.

(b)(1) Written comments filed under paragraph (a) of this section shall constitute the bulk of the evidence submitted at the hearing. Oral statements at the hearing should be brief and in the nature of argument. They should be restricted either to points that could not have been made in written comments, or to emphasizing points which are made in the comments, but which the participant believes can be more effectively argued in the hearing context.

(2) Notwithstanding the foregoing, within two weeks prior to the deadline specified in paragraph (a) of this section for the filing of comments, any party who has filed a request to participate in the hearing may move to submit all or part of its comments orally at the hearing in lieu of submitting written comments and the Presiding Officer shall, within one week, grant such motion if the Presiding Officer finds that such person will be prejudiced if required to submit such comments in written form.

(c) Parties to any hearing may submit written material in response to the comments filed by other participants under paragraph (a) of this section at the time they appear at the panel stage of the hearing under § 124.120.

**§ 124.119 Presiding Officer.**

(a)(1) Upon the granting of a request for a hearing the Regional Administrator shall, as soon as practicable, request that the Chief Administrative Law Judge assign an Administrative Law Judge as Presiding Officer. The Chief Administrative Law Judge shall thereupon make such assignment.

(2) If all parties to the hearing waive in writing their statutory right to have an Administrative Law Judge preside at the hearing, the Regional Administrator shall name a lawyer permanently or temporarily employed by the Agency and without prior connection with the proceeding to serve as Presiding Officer.

(b) It shall be the duty of the Presiding Officer to conduct a fair and impartial hearing. The Presiding Officer shall have the authority:

(1) Conferred by § 124.85(b)(1)–(15), § 124.83(b) and (c); and

(2) To receive relevant evidence, provided that all comments under § 124.118, the record of the panel hearing under § 124.120, and the administrative record, as defined in § 124.35 (or in the case of voluntary use of these procedures under § 124.111(a)(3), the administrative record for the final permit under § 124.64) shall be received in evidence.

**§ 124.120 Panel hearing.**

(a) A Presiding Officer shall preside at each hearing held under this Subpart. An EPA panel shall also take part in the hearing. The panel shall consist of three or more temporary or permanent EPA employees having special expertise in areas related to the hearing issue, at least two of whom shall not have taken part in preparing the draft permit. If appropriate for the evaluation of new or different issues presented at the hearing, the panel membership may change or may include persons not employed by EPA.

(b) At the time of the hearing notice pursuant to § 124.116, the Regional Administrator shall designate the persons who shall serve as panel members for the hearing and the Regional Administrator shall file with the Regional Hearing Clerk the name, address and area of expertise of each person so designated. The Regional Administrator may also designate EPA employees who will provide staff support to the panel but who may or may not serve as panel members. Such designated person shall be subject to the *ex parte* rules in § 124.78. The Regional Administrator may also designate Agency trial staff as defined in § 124.78 for the hearing.

(c) At any time before the close of the panel hearing, the Presiding Officer, after consultation with the panel, may request that any person having knowledge concerning the issues raised in the hearing and not then scheduled to participate therein appear and testify at the hearing.

(d) The panel members may question any person participating in the panel hearing. Cross-examination by persons other than panel members shall not be permitted at this stage of the proceeding except where the Presiding Officer determines, after consultation with the panel, that such cross-examination would expedite consideration of the issues. However, the parties may submit written questions to the Presiding Officer for the Presiding Officer to ask the participants, and the Presiding Officer may, after consultation with the panel, and at his or her sole discretion, ask these questions or permit a panel member to ask them.

(e) Within ten days after the close of the hearing, any of the participants shall submit such additional written testimony, affidavits, information or material as such participant deems relevant or which the panel may request of such participant. These additional submissions shall be filed with the Regional Hearing Clerk and shall be a part of the hearing record.

**§ 124.121 Opportunity for cross-examination.**

(a) Any participant in a panel hearing may submit a written request to cross-examine on any issue of material fact. The motion shall be submitted to the Presiding Officer within 15 days after a full transcript of the panel hearing is filed with the Regional Hearing Clerk and shall specify:

(1) The disputed issue(s) of material fact regarding which cross-examination is requested. This shall include an explanation of why the questions at issue are factual, rather than of an analytical or policy nature, the extent to which they are in dispute in light of the record made up to that stage, and the extent to which they are material to the decision on the application; and

(2) The person(s) a participant desires to cross-examine, and an estimate of the time necessary. This shall include a statement as to why the cross-examination will result in resolving the issue of material fact involved.

(b) After receipt of all motions for cross-examination under paragraph (a), the Presiding Officer, after consultation with the hearing panel, shall promptly issue an order either granting or denying each such request. If any request for cross-examination is granted, the order shall specify:

(1) The issues on which cross-examination is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons allowed to conduct cross-examination;

(4) Time limits for the examination of witnesses by each cross-examiner; and

(5) The date, time and place of the supplementary hearing at which cross-examination shall take place.

In issuing this ruling, the Presiding Officer may determine that one or more participants have the same or similar interests and that to prevent unduly repetitious cross-examination, they should be required to choose a single representative for purposes of cross-examination. In such a case, the order shall simply assign time for cross-examination by that single representative without identifying the representative further. If said participants with the same or similar interests shall fail to designate such single representative, then the Presiding Officer shall divide the assigned time among the representatives of such participants or issue such other order as justice may require.

(c) The Presiding Officer and to the extent possible, the members of the hearing panel shall be present at the supplementary hearing. During the course of the hearing, the Presiding Officer shall have authority to modify any order issued under paragraph (b) of this section. A record will be made under § 124.87.

(d)(1) No later than the time set for requesting cross-examination, a hearing participant may request that alternative methods of clarifying the record (such as the submission of additional written information) be used in lieu of or in

addition to cross-examination. The Presiding Officer shall issue an order granting or denying such request at the time he issues (or would have issued) an order under paragraph (b) of this section. If the request is granted, the order shall specify the alternative provided and any other relevant information (e.g., the due date for submitting written information).

(2) In passing on any request for cross-examination submitted under paragraph (a) of this section, the Presiding Officer may, as a precondition to ruling on the merits of such request, require alternative means of clarifying the record to be used whether or not a request to do so has been made under the immediately preceding paragraph. The person requesting cross-examination shall have one week to comment on the results of utilizing such alternative means, following which the Presiding Officer, as soon as practicable, shall issue an order granting or denying such person's request for cross-examination.

(e) The provisions of § 124.85(d)(2) apply to proceedings under this Subpart.

**§ 124.122 Record for final permit.**

(a) The record on which the final permit shall be based in any proceeding under this Subpart (other than a proceeding by consent of the parties under § 124.111(a)(3)) consists of:

(1) The administrative record compiled under § 124.35;

(2) Any material submitted under § 124.78 relating to *ex parte* contacts;

(3) All notices issued under § 124.113;

(4) All requests for hearings, and rulings on those requests received or issued under § 124.114;

(5) Any notice of hearing issued under § 124.116;

(6) Any request to participate in the hearing received under § 124.117;

(7) All comments submitted under § 124.118, any motions made under that section and the rulings on them, and any comments filed under § 124.113(b)(9);

(8) The full transcript and other material received into the record of the panel hearing under § 124.120;

(9) Any motions for, or rulings, on cross-examination filed or issued under § 124.121;

(10) Any motions for, orders for and the results of, any alternatives to cross-examination under § 124.121; and

(11) The full transcript of any cross-examination held.

(b) In any proceedings under this Subpart involving a permit which is not an initial license and which are conducted under § 124.111(a)(3), the record for decision shall consist of:

(1) The administrative record under § 124.64;

(2) All requests for hearing submitted under § 124.74, and all rulings on those requests; and

(3) The items specified in subparagraph in subparagraphs (a)(4) though (a)(11) of this section.

**§ 124.123 Filing of brief, proposed findings of fact and conclusions of law and proposed modified permit.**

Unless otherwise ordered by the Presiding Officer, each party may, within 20 days after all requests for cross-examination are denied or after a transcript of the full hearing including any cross-examination becomes available, submit proposed findings of fact; conclusions regarding material issues of law, fact, or discretion; a proposed modified NPDES permit (if such person is urging that the draft permit should be modified); and a brief in support thereof; together with references to relevant pages of transcript and to relevant exhibits. Within 10 days thereafter each party may file a reply brief concerning matters contained in opposing briefs and containing alternative findings of fact; conclusions regarding material issues of law, fact, or discretion; and a proposed modified permit. Oral argument may be held at the discretion of the Presiding Officer on motion of any party or *sua sponte*.

**§ 124.124 Recommended decision.**

The person named to prepare the decision shall, as soon as practicable after the conclusion of the hearing, evaluate the record of the hearing and prepare and file a recommended decision with the Regional Hearing Clerk. That person may consult with, and receive assistance from, any member of the hearing panel in drafting the recommended decision, and may delegate the preparation of the recommended decision to the panel or to any member or members of it. This decision shall contain findings of fact, conclusions regarding all material issues of law, and a recommendation as to whether and in what respects the draft permit shall be modified. After the recommended decision has been filed, the Regional Hearing Clerk shall serve a copy of such decision on each party and upon the Administrator.

**§ 124.125 Appeal from or review of recommended decision.**

Within 30 days after service of the recommended decision, any party may take exception to any matter set forth in such decision or to any adverse order or ruling of the Presiding Officer to which such party objected, and may appeal such exceptions to the Administrator as provided in § 124.101, except that references in § 124.101 to "initial decision" will mean recommended decision under § 124.124.

**§ 124.126 Final decision.**

As soon as practicable after all appeal proceedings have been completed, the Administrator shall issue a final decision. Such final decision shall include findings of fact; conclusions regarding material issue of law, fact, or discretion, as well as reasons therefor; and a modified NPDES permit to the extent appropriate. It may accept or reject all or part of the recommended decision. The Administrator may delegate some or all of the work of preparing this decision to a person or persons without substantial prior connection with the matter. The Administrator or a person designated by the Administrator may consult with the Presiding Officer, members of the hearing panel or any other EPA employee in preparing the final decison. The Hearing and Record Clerk shall file a copy of the decision on all hearing participants.

**§ 124.127 Final decision if there is no review.**

If no party appeals a recommended decision to the Administrator, and if the Administrator does not elect to review it, the recommended decision is deemed the final decision of the Agency upon the expiration of the time for filing any appeals.

## Subpart J—Miscellaneous

**§ 124.131 Public access to information.**

(a) All permit applications, effluent data, certifications issued under section 401 of the Act and Subpart C of this Part, comments of all governmental agencies on a permit application, and draft permits and fact sheets prepared shall be available to the public without restriction.

(b) Access to other information shall be governed by the provisions of 40 CFR Part 2.

**§ 124.132 Delegation of authority; time limitations.**

(a) The Administrator may delegate to a Judicial Officer any or all of his or her authority to act under this Subpart.

(b) The failure of the Administrator, Regional Administrator or Presiding Officer to do any act within the time periods specified herein shall not be construed as a waiver or in derogation of any rights, powers or authority of the

United States Environmental Protection Agency.

(c) Upon a showing by any party that it has been prejudiced by a failure of the Administrator, Regional Administrator, or Presiding Officer to do any act within the time periods specified herein, the Administrator, Regional Administrator, or Presiding Officer, as the case may be, may grant such party such relief of a procedural nature (including extension of any time for compliance or other action) as may be appropriate.

**§ 124.133 EPA headquarters' approval of stipulation or consent agreement.**

No evidentiary hearing under Subpart H or non-adversary initial licensing hearing under Subpart I may be resolved, settled or decided, in either whole or substantial part, by the stipulation or consent of the parties thereto, unless and until the stipulation or consent agreement is approved and signed by the Deputy Assistant Administrator for Water Enforcement. No stipulation or consent without such approval and signature shall bind EPA or have any force or effect or be filed in any proceeding.

**§ 124.134 Additional time after service by mail.**

Whenever a party or interested person has the right or is required to do some act or take some proceeding within a prescribed period after the service of notice or other paper upon him or her by mail, three days shall be added to the prescribed time.

**§ 124.135 Effective date of Part 124.**

(a) All provisions of this Part shall apply to any permit were the draft permit was included in a public notice after October 12, 1979.

(b) All the provisions of Subpart H other then § 124.76 and the provisions of §§ 124.83(c) and 124.85(d)(1) for automatic receipt of the administrative record into evidence shall apply to all hearings for which the notice of hearing is issued after [60 days after date of issuance] *provided* that the Presiding Officer at any such proceeding may vary or suspend any of the terms of these regulations in any hearing that begins before January 1, 1980, to avoid inconvenience or injustice.

(c) Section 124.64(c)(2) provides a mechanism by which EPA may in effect make permits issued before the effective date of this Part subject to its provisions.

7. Part 125 is revised to read as follows:

## PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

**Subpart A—Criteria and Standards for Imposing Technology-Based Treatment Requirements Under Section 301(b) of the Act**

Sec.
125.1 Purpose and scope.
125.2 Definitions.
125.3 Technology-based treatment requirements in permits.

**Subpart B—Criteria for Issuance of Permits to Aquaculture Projects**

125.10 Purpose and scope.
125.11 Criteria.

**Subpart C—Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology Under Section 301(k) of the Act [Reserved]**

**Subpart D—Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A), 301(b)(2) (A) and (E), and 307(b) of the Act**

125.30 Purpose and scope.
125.31 Criteria.
125.32 Method of application.

**Subpart E—Criteria for Granting Economic Variances From Best Available Technology Economically Achievable Under Section 301(c) of the Act [Reserved]**

**Subpart F—Criteria for Granting Water Quality Related Variances Under Section 301(g) of the Act [Reserved]**

**Subpart G—Criteria for Modifying the Secondary Treatment Requirement Under Section 301(h) of the Act [Reserved]**

**Subpart H—Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Act.**

125.70 Purpose and scope.
125.71 Definitions.
125.72 Early screening of applications for section 316(a) variances.
125.73 Criteria and standards for the determination of alternative effluent limitations under section 316(a).

**Subpart I—Criteria Applicable To Cooling Water Intake Structures Under Section 316(b) of the Act [Reserved]**

**Subpart J—Criteria for Extending Compliance Dates Under Section 301(i) of the Act**

125.90 Purpose and scope.
125.91 Definition.
125.92 Requests for permit modification and issuance under section 301(i)(1) of the Act.
125.93 Criteria for permit modification and issuance under section 301(i)(1) of the Act.
125.94 Permit terms and conditions under section 301(i)(1) of the Act.
125.95 Requests for permit modification or issuance under section 301(i)(2) of the Act.
125.96 Criteria for permit modification or issuance under section 301(i)(2) of the Act.
125.97 Permit terms and conditions under section 301(i)(2) of the Act.

**Subpart K—Criteria and Standards for Best Management Practices Under Section 304(e) of the Act**

125.100 Purpose and scope.
125.101 Definition.
125.102 Applicability of best management practices.
125.103 Permit terms and conditions.
125.104 Best management practices programs.

**Subpart L—Criteria and Standards for Imposing Conditions for the Disposal of Sewage Sludge Under Section 405 of the Act [Reserved]**

**Subpart M—Ocean Dumping Criteria Under Section 403 of the Act [Reserved]**

**Authority:** Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq.

### Subpart A—Criteria and Standards for Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Act

**§ 125.1 Purpose and scope.**

This Subpart establishes criteria and standards for the imposition of technology-based treatment requirements in permits under section 301(b) of the Act, including the application of EPA promulgated effluent limitations and case-by-case determinations of effluent limitations under section 402(a)(1) of the Act.

**§ 125.2 Definitions.**

Unless otherwise noted, the definitions in Parts 122, 123, and 124 apply to this Part.

**§ 125.3 Technology-based treatment requirements in permits.**

(a) *General.* Technology-based treatment requirements under section 301(b) of the Act represent the minimum level of control that must be imposed in a permit issued under section 402 of the Act. (See §§ 122.14 and 122.15 for a discussion of additional or more stringent effluent limitations and conditions.) Permits shall contain the following technology-based treatment requirements in accordance with the following statutory deadlines;

(1) For POTW's, effluent limitations based upon:

(i) Secondary treatment—from date of permit issuance; and

(ii) The best practicable waste treatment technology—not later than July 1, 1983; and

(2) For dischargers other than POTW's except as provided in § 122.47(d), effluent limitations requiring:

(i) The best practicable control technology currently available (BPT)—from date of permit issuance;

(ii) For conventional pollutants, the best conventional pollutant control technology (BCT)—not later than July 1, 1984;

(iii) For all toxic pollutants referred to in Committee Print No. 95–30, House Committee on Public Works and Transportation, the best available technology economically achievable (BAT) — not later than July 1, 1984;

(iv) For all toxic pollutants other than those listed in Committee Print No. 95–30, effluent limitations based on the BAT not later than three years after the date such effluent limitations are incorporated into an NPDES permit; and

(v) For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT not later than three years after the date such effluent limitations are incorporated into an NPDES permit, or July 1, 1984, whichever is later, but in no case later than July 1, 1987.

(b) *Statutory variances and extensions.* (1) The following variances from technology-based treatment requirements are authorized by the Act and may be applied for under § 124.51:

(i) For POTW's, a section 301(h) marine discharge variance from secondary treatment (Subpart G);

(ii) For dischargers other than POTW's;

(A) A section 301(c) economic variance from BAT (Subpart E);

(B) A section 301(g) water quality related variance from BAT (Subpart F); and

(C) A section 316(a) thermal variance from BPT, BCT and BAT (Subpart H).

(2) The following extensions of deadlines for compliance with technology-based treatment requirements are authorized by the Act and may be applied for under § 124.51:

(i) For POTW's a section 301(i) extension of the secondary treatment deadline (Subpart J);

(ii) For dischargers other than POTW's:

(A) A section 301(i) extension of the BPT deadline (Subpart J); and

(B) A section 301(k) extension of the BAT deadline (Subpart C).

(c) *Methods of imposing technology-based treatment requirements in permits.* Technology-based treatment requirements may be imposed through one of the following three methods:

(1) Application of EPA-promulgated effluent limitations developed under section 304 of the Act to dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been remanded or withdrawn. However, in the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variances from these effluent limitations under § 124.51 and Subpart D of this Part.

(2) On a case-by-case basis under section 402(a)(1) of the Act, to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors listed in section 304 of the Act, and shall consider:

(i) The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information (including EPA draft or proposed development documents or guidance); and

(ii) Any unique factors relating to the applicant.

[*Comment:* These factors must be considered in all cases, regardless of whether the permit is being issued by EPA or an approved State.]

(3) Through a combination of the methods in paragraphs (c) (1) and (2) of this section. Where promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutants, other aspects or activities are subject to regulation on a case-by-case basis in order to carry out the provisions of the Act.

(d) Technology-based treatment requirements are applied prior to or at the point of discharge.

(e) Technology-based treatment requirements cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:

(1) The technology-based treatment requirements applicable to the discharge are not sufficient to achieve the standards;

(2) The discharger agrees to waive any opportunity to request a variance under sections 301 (c), (g) or (h) of the Act; and

(3) The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(f) Technology-based effluent limitations shall be established under this Subpart for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

## Subpart B—Criteria for Issuance of Permits to Aquaculture Projects

### § 125.10 Purpose and scope.

(a) These regulations establish guidelines under sections 318 and 402 of the Act for approval of any discharge of pollutants associated with an aquaculture project.

(b) The regulations authorize, on a selective basis, controlled discharges which would otherwise be unlawful under the Act in order to determine the feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially. EPA policy is to encourage such projects, while at the same time protecting other beneficial uses of the waters.

(c) Permits issued for discharges into aquaculture projects under this Subpart are NPDES permits and are subject to the applicable requirements of Parts 122, 123 and 124. Any permit shall include such conditions (including monitoring and reporting requirements) as are necessary to comply with those Parts. Technology-based effluent limitations need not be applied to discharges into the approved project except with respect to toxic pollutants.

### § 125.11 Criteria.

(a) No NPDES permit shall be issued to an aquaculture project unless:

(1) The Director determines that the aquaculture project:

(i) Is intended by the project operator to produce a crop which has significant direct or indirect commercial value (or is intended to be operated for research into possible production of such a crop); and

(ii) Does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes.

(2) The applicant has demonstrated, to the satisfaction of the Director, that the use of the pollutant to be discharged to the aquaculture project will result in an increased harvest of organisms under

culture over what would naturally occur in the area;

(3) The applicant has demonstrated, to the satisfaction of the Director, that if the species to be cultivated in the aquaculture project is not indigenous to the immediate geographical area, there will be minimal adverse effects on the flora and fauna indigenous to the area, and the total commercial value of the introduced species is at least equal to that of the displaced or affected indigenous flora and fauna;

(4) The Director determines that the crop will not have a significant potential for human health hazards resulting from its consumption;

(5) The Director determines that migration of pollutants from the designated project area to water outside of the aquaculture project will not cause or contribute to a violation of water quality standards or a violation of the applicable standards and limitations applicable to the supplier of the pollutant that would govern if the aquaculture project were itself a point source. The approval of an aquaculture project shall not result in the enlargement of a pre-existing mixing zone area beyond what had been designated by the State for the original discharge.

(b) No permit shall be issued for any aquaculture project in conflict with a plan or an amendment to a plan approved under section 208(b) of the Act.

(c) No permit shall be issued for any aquaculture project located in the territorial sea, the waters of the contiguous zone, or the oceans, except in conformity with guidelines issued under section 403(c) of the Act.

(d) Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area. For example, the designated project area shall not include the entire width of a watercourse, since all organisms indigenous to that watercourse might be subjected to discharges of pollutants that would, except for the provisions of section 318 of the Act, violate section 301 of the Act.

(e) Any modifications caused by the construction or creation of a reef, barrier or containment structure shall not unduly alter the tidal regimen of an estuary or interfere with migrations of unconfined aquatic species.

[*Comment:* Any modifications described in this paragraph which result in the discharge of dredged or fill material into navigable waters may be subject to the permit requirements of section 404 of the Act.]

(f) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

## Subpart C—Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology Under Section 301(k) of the Act—[Reserved]

## Subpart D—Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A), 301(b)(2) (A) and (E), and 307(b) of the Act.

### § 125.30 Purpose and scope.

(a) This Subpart establishes the criteria and standards to be used in determining whether effluent limitations or standards alternative to those required by promulgated EPA effluent limitations guidelines or standards under sections 301, 304, and 307(b) of the Act (hereinafter referred to as "national limits") should be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This Subpart applies to all national limits promulgated under sections 301, 304 and 307(b) of the Act, except for those contained in 40 CFR Part 423 (steam electric generating point source category).

(b) In establishing national limits, EPA takes into account all the information it can collect, develop and solicit regarding the factors listed in sections 304(b), 304(g) and 307(b) of the Act. In some cases, however, data which could affect these national limits as they apply to a particular discharge may not be available or may not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the national limits, and make them either more or less stringent as they apply to certain dischargers within an industrial category or subcategory. This will only be done if data specific to that discharger indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to a discharger's facilities, equipment, processes or other facilities related to the discharger are fundamentally different from the factors considered during development of the national limits may request a fundamentally different factors variance under § 124.51(b)(1). In addition, such a variance may be proposed by the Director in the draft permit (see § 123.22(a)(2)(ii)).

### § 125.31 Criteria.

(a) A request for the establishment of effluent limitations under this Subpart (fundamentally different factors variance) shall be approved only if:

(1) There is an applicable national limit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested; and

(2) Factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limits; and

(3) The request for alternative effluent limitations or standards is made in accordance with the procedural requirements of Part 124.

(b) A request for the establishment of effluent limitations less stringent than those required by national limits guidelines shall be approved only if:

(1) The alternative effluent limitation or standard requested is no less stringent than justified by the fundamental difference; and

(2) The alternative effluent limitation or standard will ensure compliance with sections 208(e) and 301(b)(1)(C) of the Act; and

(3) Compliance with the national limits (either by using the technologies upon which the national limits are based or by other control alternatives) would result in:

(i) A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

(ii) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits.

(c) A request for alternative limits more stringent than required by national limits shall be approved only if:

(1) The alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and

(2) Compliance with the alternative effluent limitation or standard would not result in:

(i) A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

(ii) A non-water quality environmental impact (including energy requirements) fundamentally more

adverse than the impact considered during development of the national limits.

(d) Factors which may be considered fundamentally different are:

(1) The nature or quality of pollutants contained in the raw waste load of the applicant's process wastewater;

[*Comment:* (1) In determining whether factors concerning the discharger are fundamentally different, EPA will consider, where relevant, the applicable development document for the national limits, associated technical and economic data collected for use in developing each respective national limit, records of legal proceedings, and written and printed documentation including records of communication, etc., relevant to the development of respective national limits which are kept on public file by EPA. (2) Waste stream(s) associated with a discharger's process wastewater which were not considered in the development of the national limits will not ordinarily be treated as fundamentally different under paragraph (a). Instead, national limits should be applied to the other streams, and the unique stream(s) should be subject to limitations based on section 402(a)(1) of the Act. See § 125.2(c)(2).]

(2) The volume of the discharger's process wastewater and effluent discharged;

(3) Non-water quality environmental impact of control and treatment of the discharger's raw waste load;

(4) Energy requirements of the application of control and treatment technology;

(5) Age, size, land availability, and configuration as they relate to the discharger's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;

(6) Cost of compliance with required control technololgy.

(e) A variance request or portion of such a request under this section shall not be granted on any of the following grounds:

(1) The infeasibility of installing the required waste treatment equipment within the time the Act allows.

[*Comment:* Under this section a variance request may be approved if it is based on factors which relate to the discharger's ability ultimately to achieve national limits but not if it is based on factors which merely affect the discharger's ability to meet the statutory deadlines of sections 301 and 307 of the Act such as labor difficulties, construction schedules, or unavailability of equipment.]

(2) The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in paragraph (d) of this section;

[*Comment:* Review of the Administrator's action in promulgating national limits is available only through the judicial review procedures set forth in section 509(b) of the Act.]

(3) The discharger's ability to pay for the required waste treatment; or

(4) The impact of a discharge on local receiving water quality.

(f) Nothing in this section shall be construed to impair the right of any State or locality under section 510 of the Act to impose more stringent limitations than those required by Federal law.

### § 125.32 Method of application.

(a) A written request for a variance under this Subpart shall be submitted in duplicate to the Director in accordance with Part 124 Subpart F.

(b) The burden is on the person requesting the variance to explain that:

(1) Factor(s) listed in § 125.31(b) regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The requester should refer to all relevant material and information, such as the published guideline regulations development document, all associated technical and economic data collected for use in developing each national limit, all records of legal proceedings, and all written and printed documentation including records of communication, etc., relevant to the regulations which are kept on public file by the EPA;

(2) The alternative limitations requested are justified by the fundamental difference alleged in paragraph (b)(1) of this section; and

(3) The appropriate requirements of § 125.31 have been met.

## Subpart E—Criteria for Granting Economic Variances from Best Available Technology Economically Achievable Under Section 301(c) of the Act—[Reserved]

## Subpart F—Criteria for Granting Water Quality Related Variances Under Section 301(g) of the Act—[Reserved]

## Subpart G—Criteria for Modifying the Secondary Treatment Requirement Under Section 301(h) of the Act—[Reserved]

## Subpart H—Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Act

### § 125.70 Purpose and scope.

Section 316(a) of the Act provides that:

"With respect to any point source otherwise subject to the provisions of section 301 or section 306 of this Act, whenever the owner or operator of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the projection [sic] and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose an effluent limitation under such sections on such plant, with respect to the thermal component of such discharge (taking into account the interaction of such thermal component with other pollutants), that will assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on that body of water."

This Subpart describes the factors, criteria and standards for the establishment of alternative thermal effluent limitations under section 316(a) of the Act in permits issued under section 402(a) of the Act.

### § 125.71 Definitions.

For the purpose of this Subpart:

(a) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under section 316(a) and this Subpart.

(b) "Representative important species" means species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish and wildlife in the body of water into which a discharge of heat is made.

(c) The term "balanced, indigenous community" is synonymous with the term "balanced, indigenous population" in the Act and means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modifications. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with section

301(b)(2) of the Act; and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to section 316(a).

**§ 125.72 Early screening of applications for section 316(a) variances.**

(a) Any initial application for a section 316(a) variance shall include the following early screening information:

(1) A description of the alternative effluent limitation requested;

(2) A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;

(3) A general description of the type of data, studies, experiments and other information which the discharger intends to submit for the demonstration; and

(4) Such data and information as may be available to assist the Director in selecting the appropriate representative important species.

(b) After submitting the early screening information under paragraph (a), the discharger shall consult with the Director at the earliest practicable time (but not later than 30 days after the application is filed) to discuss the discharger's early screening information. Within 60 days after the application is filed, the discharger shall submit for the Director's approval a detailed plan of study which the discharger will undertake to support its section 316(a) demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: biological, hydrographical and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies; representative important species; and other relevant information. In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the Director shall either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the Director subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger may provide any additional information or studies which the discharger feels are appropriate to support the demonstration.

(c) Any application for the renewal of a section 316(a) variance shall include only such information described in paragraphs (a) and (b) of this section and § 124.73(c)(1) as the Director requests within 60 days after receipt of the permit application.

(d) The Director shall promptly notify the Secretary of Commerce and the Secretary of the Interior, and any affected State of the filing of the request and shall consider any timely recommendations they submit.

(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making such demonstrations.

(f) If an applicant desires a ruling on a section 316(a) application before the ruling on any other necessary permit terms and conditions, (as provided by § 124.57), it shall so request upon filing its application under paragraph (a) of this section. This request shall be granted or denied in the discretion of the Director.

[*Comment:* At the expiration of the permit, any discharger holding a section 316(a) variance should be prepared to support the continuation of the variance with studies based on the discharger's actual operation experience.]

**§ 125.73 Criteria and standards for the determination of alternative effluent limitations under section 316(a).**

(a) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the satisfaction of the director that such effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made. This demonstration must show that the alternative effluent limitation desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made.

(b) In determining whether or not the protection and propagation of the affected species will be assured, the Director may consider any information contained or referenced in any applicable thermal water quality criteria and thermal water quality information published by the Administrator under section 304(a) of the Act, or any other information he deems relevant.

(c)(1) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such demonstrations shall show:

(i) That no appreciable harm has resulted from the normal component of the discharge (taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge has been made; or

(ii) That despite the occurrence of such previous harm, the desired alternative effluent limitations (or appropriate modifications thereof) will nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made.

(2) In determining whether or not prior appreciable harm has occurred, the Director shall consider the length of time in which the applicant has been discharging and the nature of the discharge.

## Subpart I—Criteria Applicable to Cooling Water Intake Structures Under Section 316(b) of the Act [Reserved]

## Subpart J—Criteria for Extending Compliance Dates Under Section 301(i) of the Act

**§ 125.90 Purpose and scope.**

Under sections 301(i)(1) and (2) of the Act, extensions of the 1977 statutory deadline for compliance with certain treatment requirements may be granted by the Director through permit issuance or modification. This Subpart establishes criteria for granting these extensions and the method for incorporating these extensions into permits issued under section 402(a) of the Act.

**§ 125.91 Definition.**

For purposes of this Subpart, "construction" includes any one of the following: preliminary planning to determine the feasibility of treatment works; engineering, architectural, legal fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items

*provided that* completion of the facility and attainment of operational level by no later than July, 1, 1983, is a reasonable expectation.

**§ 125.92 Requests for permit modification and issuance under section 301(i)(1) of the Act.**

Any owner or operator of a publicly owned treatment works (POTW) that requires construction to achieve limitations under sections 301(b)(1)(B) or 301(b)(1)(C) of the Act may request modification or issuance of a permit extending the date for compliance with these limitations in accordance with the provisions of § 124.51(c).

**§ 125.93 Criteria for permit modification and issuance under section 301(i)(1) of the Act.**

No request for a permit modification or issuance under section 301(i)(1) shall be granted unless the Director finds that the POTW requires construction to achieve limitations under sections 301(b)(1)(B) or 301(b)(1)(C) of the Act and did not complete construction for either of the following reasons:

(a) The issuance of a notice to proceed under a construction contract for any segment of Step 3 project work (or if notice to proceed is not required, the execution of the construction contract) occurred before July 1, 1977, but construction could not physically be completed by July 1, 1977, despite all expeditious efforts of the POTW (see initiation of construction as defined in 40 CFR § 35.905 for Step 3); or

(b) Federal financial assistance was not available, or was not available in time for construction required to achieve these limitations, and the POTW did not in any significant way contribute to this unavailability or delay.

**§ 125.94 Permit terms and conditions under section 301(i)(1) of the Act.**

(a) All permits modified or issued by the Director under section 301(i)(1) of the Act shall contain at a minimum the following permit terms and conditions:

(1) the shortest reasonable schedule of compliance for achievement of limitations under sections 301(b)(1) (B) and (C) but in no event later than July 1, 1983. This schedule shall be based upon the earliest date that Federal financial assistance will be available and construction can be completed and on any additional information submitted by the POTW or otherwise available.

(i) When a facility plan has been approved in accordance with 40 CFR 35, Subpart E, this schedule shall contain dates certain for the completion of actions leading toward the attainment of statutory treatment limitations.

(ii) When the POTW has not completed Step 1 of the construction grants process in accordance with 40 CFR 35, Subpart E, this schedule shall contain a date certain for the submission of a facility plan (completion of Step 1) upon which date the permit should be set to expire. In this case, in order to assure compliance by the POTW by July 1, 1983, the following requirements must be met:

(A) Certification by the State, based on its one or five year project priority list developed pursuant to 40 CFR 35.915(c), that funding will be available in time to ensure compliance by July 1, 1983; and

(B) Reporting once a year (if necessary) by the POTW as to its progress in obtaining Federal funding.

[*Comment:* EPA recognizes that the date for submission of the facility plan may not take into account all the uncertainties of the Step 1 planning process. Because of the uncertainties inherent in the Step 1 planning process, EPA recommends that section 301(i)(1) requests (and permit issuance) for projects that are presently in Step 2 or 3 should be acted on *before* requests from projects in Step 1. When Federal funding in the form of a Step 2 construction grant award is made available, and the Step 1 permit has expired, the permit is to be reissued containing a date certain schedule derived from the facility plan and coordinated with the State Project Priority List.]

(2) A statement ensuring compliance with requirements under sections 201 (b) through (g) of the Act consistent with the terms of the POTWs construction grant.

(3) Abatement practices and interim effluent limitations reflecting optimum operation and maintenance of the existing facilities. These shall include:

(i) Adequate operator staffing and training;

(ii) Adequate laboratory and process controls; and

(iii) Effluent limitations derived from reports of operation and maintenance inspections conducted by EPA or the State, or other guidance.

[*Comment:* Only in exceptional circumstances should in-depth plant evaluations be conducted, e.g., when existing information does not represent the true capabilities of the plant.]

(4) Interim effluent limitations reflecting other non-capital intensive measures for increased pollution control. This shall include any possible minor facility modifications such as piping changes, additional metering and instrumentation or the use of skimming and vacuuming equipment. When an existing POTW is currently violating limitations imposed under section 301(b)(1)(C) of the Act, interim effluent limitations shall be established to minimize adverse water quality impact; these limitations shall not be made less stringent or allow more pollutants to be discharged than are currently being discharged during the term of an extension granted under section 301(i)(1) of the Act.

(b) If a POTW has industrial users, any permit issued or modified by the Director under section 301(i)(1) shall contain any terms and conditions necessary to ensure compliance with 40 CFR 403.

**§ 125.95 Requests for permit modification or issuance under section 301(i)(2) of the Act.**

Any owner or operator of a point source other than a POTW that will not achieve the requirements of sections 301(b)(1)(A) and 301(b)(1)(C) of the Act because it was scheduled to discharge into a POTW that is presently unable to accept the discharge without construction, may request modification or issuance of a permit extending the date of compliance with these limitations in accordance with the provisions of § 124.51(b).

**§ 125.96 Criteria for permit modification or issuance under section 301(i)(2) of the Act.**

No request for a permit modification or issuance under section 301(i)(2) of the Act shall be granted unless the Director finds that the discharger has failed to achieve the requirements of sections 301(b)(1)(A) and 301(b)(1)(C) of the Act because it was scheduled to discharge into a POTW that is presently unable to accept the discharge without construction, and:

(a) The discharger has indicated an intent to discharge into the POTW before July 1, 1977, in one of the following ways:

(1) The discharger was issued a permit before July 1, 1977, based upon a discharge into a POTW;

(2) The discharger had a binding contractual obligation before July 1, 1977, (enforceable against the discharger) to discharge into a POTW. Contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this paragraph.

(3) A construction grant application made by the POTW before July 1, 1977, clearly demonstrated that the discharger was to discharge into the POTW; or

(4) Engineering plans, architectural plans or working drawings prepared for

the POTW before July 1, 1977, clearly demonstrated the discharger was to discharge into the POTW. Plans and drawings, such as those accompanying a bona fide application for a Federal construction grant, are sufficient only to the extent that they were truly representative of the intent of the discharger and the POTW;

(b) The Director finds that the discharger has acted in good faith in its efforts to effectuate discharge into the POTW and to minimize or abate pollution prior to discharge into the POTW. This shall include the following findings:

(i) Failure of the discharger to meet the July 1, 1977, deadline was for reasons beyond its control;

(ii) A history of a high degree of commitment to meet the requirements of the Act as manifested by cooperation with the State or EPA in attempting to resolve disputed issues;

(iii) No history of unjustified delay;

(iv) No past serious or intentional violations of the Act; and

(v) All reasonable measures are being taken to expedite compliance.

[*Comment:* The Director may also consider whether the discharger has operated its facilities competently and responsibly and the exent to which the discharger has completed the necessary prerequisites to having its waste treated by the POTW.]

(c) The POTW will be in operation and available to the discharger July 1, 1983;

(d) The POTW will be able to meet secondary treatment and water quality standard effluent limitations by July 1, 1983, after receiving the waste from the discharger;

(e) The discharger and the POTW have entered into an enforceable contract providing that:

(i) The discharger agrees to discharge its waste to the POTW;

(ii) The POTW agrees to accept and treat that waste by a date certain; and

(iii) The discharger agrees to pay all user charges and industrial cost recovery charges required under section 204 of the Act; and

(f) In the case of a discharge into an existing POTW, such POTW has been granted an extension under section 301(i)(1) of the Act.

### § 125.97 Permit terms and conditions under section 301(i)(2) of the Act.

All permits modified or issued by the Director under section 301(i)(2) of the Act shall contain at a minimum the following permit terms and conditions:

(a) The shortest reasonable schedule of compliance leading to discharge into the POTW, not to extend beyond the earliest date practicable for compliance, or beyond the final compliance date of any extension granted to the appropriate POTW under section 301(i)(1) of the Act, but in no event later than July 1, 1983. This schedule shall be based upon the earliest date by which the appropriate POTW can receive the waste from the discharger and the discharger can complete the necessary prerequisites to having its waste treated by that POTW.

(b) Achievement of effluent limitations and standards under sections 301(b)(1)(A) and 301(b)(1)(C) of the Act by the same final date in the schedule established in paragraph (a) of this section in the event that the permittee does not discharge its wastes to the POTW by the date established under paragraph (a) of this section.

(c) Abatement practices and interim effluent limitations reflecting optimum operation and maintenance of the discharger's existing facilities. These shall include:

(1) Effective performance of facility design removals;

(2) Adequate operator staffing and training; and

(3) Adequate laboratory and process control.

(d) Interim effluent limitations reflecting other non-capital intensive measures for increased pollution control.

(e) Requirements to meet applicable toxic effluent standards and prohibitions after they are promulgated under section 307(a) of the Act.

(f) Requirements to ensure compliance with:

(1) Pretreatment requirements imposed by the POTW pursuant to any extension granted to the POTW under section 301(i)(1);

(2) Any State or local pretreatment requirements; and

(3) Pretreatment standards as promulgated under section 307(b) of the Act.

[*Comment:* The legislative history cites the following example: "[I]f an industry is planning on participating in a municipal system which will not be available until January 1983, that industry would still have to install and operate pretreatment facilities within the time specified for compliance at the time the applicable pretreatment standard was promulgated and in no event later than three years from the date of said promulgation. Thus, if the pretreatment regulations are promulgated March 1, 1979, and require compliance within two years, that industry would be required to comply by March 1, 1981." H.R. Rep. No. 95–830, 95th Cong., 1st Sess., 12712 (daily ed. Dec. 6, 1977).]

(g) Any water conservation requirements necessary to carry out the provisions of the Act or imposed by the POTW pursuant to the contract executed between the discharger and the POTW.

[*Comment:* The existence of such a contract is a prerequisite to granting an extension under section 301(i)(2)(B) of the Act and § 125.96(e).]

## Subpart K—Criteria and Standards for Best Management Practices Authorized Under Section 304(e) of the Act

### § 125.100 Purpose and scope.

This Subpart describes how best management practices (BMPs) for ancillary industrial activities under section 304(e) of the Act shall be reflected in permits, including best management practices promulgated in effluent limitations under section 304 and established on a case-by-case basis in permits under section 402(a)(1) of the Act. Best management practices authorized by section 304(e) are included in permits as requirements for the purposes of sections 301, 302, 306, 307, or 403 of the Act, as the case may be.

### § 125.101 Definition.

"Manufacture" means to produce as an intermediate or final product, or by-product.

### § 125.102 Applicability of best management practices.

Dischargers who use, manufacture, store, handle or discharge any pollutant listed as toxic under section 307(a)(1) of the Act or any pollutant listed as hazardous under section 311 of the Act are subject to the requirements of this Subpart for all activities which may result in significant amounts of those pollutants reaching waters of the United States. These activities are ancillary manufacturing operations including: materials storage areas; in-plant transfer, process and material handling areas; loading and unloading operations; plant site runoff; and sludge and waste disposal areas.

### § 125.103 Permit terms and conditions.

(a) Best management practices shall be expressly incorporated into a permit where required by an applicable EPA promulgated effluent limitations guideline under section 304(e);

(b) Best management practices may be expressly incorporated into a permit on a case-by-case basis where determined necessary to carry out the provisions of the Act under section 402(a)(1). In issuing a permit containing BMP

requirements, the Director shall consider the following factors:

(1) Toxicity of the pollutant(s);

(2) Quantity of the pollutant(s) used, produced, or discharged;

(3) History of NPDES permit violations;

(4) History of significant leaks or spills of toxic or hazardous pollutants;

(5) Potential for adverse impact on public health (e.g., proximity to a public water supply) or the environment (e.g., proximity to a sport or commerical fishery); and

(6) Any other factors determined to be relevant to the control of toxic or hazardous pollutants.

(c) Best management practices may be established in permits under paragraph (b) of this section alone or in combination with those required under paragraph (a) of this section.

(d) In addition to the requirements of paragraphs (a) and (b) of this section, dischargers covered under § 125.102 shall develop and implement a best management practices program in accordance with § 125.104 which prevents, or minimizes the potential for, the release of toxic or hazardous pollutants from ancillary activities to waters of the United States.

**§ 125.104 Best management practices programs.**

(a) BMP programs shall be developed in accordance with good engineering practices and with the provisions of this Subpart.

(b) The BMP program shall:

(1) Be documented in narrative form, and shall include any necessary plot plans, drawings or maps;

(2) Establish specific objectives for the control of toxic and hazardous pollutants.

(i) Each facility component or system shall be examined for its potential for causing a release of significant amounts of toxic or hazardous pollutants to waters of the United States due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc.

(ii) Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of toxic or hazardous pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of toxic or hazardous pollutants which could be discharged from the facility as a result of each condition or circumstance;

(3) Establish specific best management practices to meet the objectives identified under paragraph (b)(2) of this section, addressing each component or system capable of causing a release of significant amounts of toxic or hazardous pollutants to the waters of the United States;

(4) The BMP program:

(i) May reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the Act and 40 CFR Part 151, and may incorporate any part of such plans into the BMP program by reference;

[*Comment:* EPA has proposed section 311(j)(1)(c) regulations (43 FR 39276) which require facilities subject to NPDES to develop and implement SPCC plans to prevent discharges of reportable quantities of designated hazardous substances. While Subpart K requires only procedural activities and minor construction, the proposed 40 CFR 151 (SPCC regulations) are more stringent and comprehensive with respect to their requirements for spill prevention. In developing BMP programs in accordance with Subpart K, owners or operators should also consider the requirements of proposed 40 CFR 151 which may address many of the same areas of the facility covered by this Subpart.]

(ii) Shall assure the proper management of solid and hazardous waste in accordance with regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) (40 U.S.C. 6901 *et seq).* Management practices required under RCRA regulations shall be expressly incorporated into the BMP program; and

(iii) Shall address the following points for the ancillary activities in § 125.102:

(A) Statement of Policy;

(B) Spill Control Committee;

(C) Material Inventory;

(D) Material Compatibility;

(E) Employee Training;

(F) Reporting and Notification Procedures;

(G) Visual Inspections;

(H) Preventive Maintenance;

(I) Housekeeping; and

(J) Security.

[*Comment:* Additional technical information on BMPs and the elements of a BMP program is contained in a publication entitled "NPDES Best Management Practices Guidance Document." Copies may be obtained by written request to Edward A. Kramer (EN-336), Office of Water Enforcement, Environmental Protection Agency, Washington, D.C. 20460.]

(c)(1) The BMP program must be clearly described and submitted as part of the permit application. An application which does not contain a BMP program shall be considered incomplete. Upon receipt of the application, the Director shall approve or modify the program in accordance with the requirements of this Subpart. The BMP program as approved or modified shall be included in the draft permit (§ 124.31). The BMP program shall be subject to the applicable permit issuance requirements of Part 124, resulting in the incorporation of the program (including any modifications of the program resulting from the permit issuance procedures) into the final permit.

(2) Proposed modifications to the BMP program which affect the discharger's permit obligations shall be submitted to the Director for approval. If the Director approves the proposed BMP program modification, the permit shall be modified in accordance with § 122.31, *provided* that the Director may waive the requirements for public notice and opportunity for hearing on such modification if he or she determines that the modification is not significant. The BMP program, or modification thereof, shall be fully implemented as soon as possible but not later than one year after permit issuance, modification, or revocation and reissuance unless the Director specifies a later date in the permit.

[*Comment:* A later date may be specified in the permit, for example, to enable coordinated preparation of the BMP program required under these regulations and the SPCC plan required under 40 CFR 151 or to allow for the completion of construction projects related to the facility's BMP or SPCC program.]

(d) The discharger shall maintain a description of the BMP program at the facility and shall make the description available to the Director upon request.

(e) The owner or operator of a facility subject to this Subpart shall amend the BMP program in accordance with the provisions of this Subpart whenever there is a change in facility design, construction, operation, or maintenance which materially affects the facility's potential for discharge of significant amounts of hazardous or toxic pollutants into the waters of the United States.

(f) If the BMP program proves to be ineffective in achieving the general objective of preventing the release of significant amounts of toxic or hazardous pollutants to those waters and the specific objectives and requirements under paragraph (b) of this section, the permit and/or the BMP program shall be subject to modification to incorporate revised BMP requirements.

**Subpart L—Criteria and Standards for Imposing Conditions for the Disposal of Sewage Sludge Under Section 405 of the Act [Reserved]**

**Subpart M—Ocean Dumping Criteria Under Section 403 of the Act [Reserved]**

**PART 402—COOLING WATER INTAKE STRUCTURES [DELETED]**

8. 40 CFR Part 402 is deleted.

**PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION.**

9. 40 CFR Part 403 is amended as follows:

A. The Table of Contents is amended by revising the heading for § 403.11 to read as follows:

* * * * *

**§ 403.11 Approval procedures for POTW pretreatment programs and revision of categorical pretreatment standards.**

* * * * *

B. Section 403.7 is amended by revising paragraph (e)(3) to read as follows:

**§ 403.7 [Amended]**

* * * * *

(e) * * * (3) The Regional Administrator may agree, in the Memorandum of Agreement under 40 CFR 123.7, to waive the right to review and object to Submissions for authority to revise discharge limits under this section. Such an agreement shall not restrict the Regional Administrator's right to comment upon or object to permits issued to POTWs except to the extent permitted under 40 CFR 123.7(b)(3)(i)(D).

* * * * *

C. Section 403.8 is amended by revising the first sentence of paragraph (f)(2)(vii) to read as follows:

**§ 403.8 [Amended]**

* * * * *

(f) * * * (2) * * * (vii) Comply with the public participation requirements of 40 CFR Part 25 in the enforcement of National Pretreatment Standards.

* * * * *

**§ 403.9 [Amended]**

D. Section 403.9(d) is deleted and §§ 403.9(e) and (f) are redesignated as §§ 403.9(d) and (e), respectively.

**§ 403.10 [Amended]**

E. Section 403.10(d)(1) is amended by deleting the words "set forth in § 403.10(b)" from the first and second sentences.

F. Section 403.10 is amended by revising paragraph (f)(1) to read as follows:

* * * * *

(f) * * * (1) Legal Authority. The Attorney General's Statement submitted in accordance with paragraph (g)(1)(i) shall certify that the Director has authority under State law to operate and enforce the State pretreatment program to the extent required by this Part and by 40 CFR 123.32. At a minimum, the Director shall have the authority to:

* * * * *

G. Section 403.10 is amended by revising paragraph (g)(1) to read as follows:

* * * * *

(g)(1)(i) A statement from the State Attorney General (or the Attorney for those State agencies which have independent legal counsel) that the laws of the State provide adequate authority to implement the requirements of this Part. The authorities cited by the Attorney General in this statement shall be in the form of lawfully adopted State statutes and regulations which shall be in full force and effect before the time of approval of the State pretreatment program.

(ii) Copies of all State statutes and regulations cited in the above statement.

* * * * *

H. Section 403.10 is amended by revising paragraph (g)(3) to read as follows:

* * * * *

(g) * * *

(3) Any modifications or additions to the Memorandum of Agreement (required by 40 CFR 123.7) which may be necessary for EPA and the State to implement the requirements of this Part.

* * * * *

I. Section 403.10 is amended by revising paragraph (h)(2) to read as follows:

* * * * *

(h) * * *

(2) Commence the program revision process set out in 40 CFR 123.61. For purposes of that section all requests for approval of State pretreatment programs shall be deemed substantial program modifications. A comment period of at least 30 days and the opportunity for a hearing shall be afforded the public on all such proposed program revisions.

* * * * *

J. Section 403.10(i) is amended by substituting the words "this Part" for the words "paragraph (g) of this section" in both places they appear.

K. The heading of § 403.11 is revised to read as follows:

**§ 403.11 Approval Procedures for POTW Pretreatment Programs and Revision of Categorical Pretreatment Standards.**

L. Section 403.11 is amended by revising the first sentence to read as follows:

"The following procedures shall be followed in approving or denying requests for POTW Pretreatment Program approval:"

* * * * *

M. Section 403.11 is amended by deleting all references to § 403.10(f) and (g).

N. Section 403.11(a) is amended by changing the reference in two places from "§ 403.9(e) and (f)" to "§ 403.9(d) and (e)."

O. Section 403.11(b)(1)(i) is amended by deleting from the first sentence the words "shall be published in the **Federal Register** in the case of a State Submission and"

P. Section 403.11(b)(1)(i)(A) is deleted and subparagraphs (B) and (C) are redesignated to (A) and (B) respectively.

Q. Section 403.11 is amended by revising subparagraph (b)(1)(i)(B), (formerly (b)(1)(i)(C)), to read as follows:

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) Publication of a notice of request for approval of the Submission in the largest daily newspaper within the jurisdiction(s) served by the POTW.

* * * * *

R. Section 403.11 is amended by substituting the words "30 days" wherever the words "45 days" appear.

S. Section 403.11(b)(2)(ii) is amended by deleting the words "a State or."

T. Section 403.11(e) is amended by deleting the words "or Director."

[FR Doc. 79-17271 Filed 6-6-79; 8:45 am]

BILLING CODE 6560-01-M

federal register

Thursday
June 7, 1979

Part III

# Department of Commerce

## Office of the Secretary

## Regional Action Planning Commissions Operations; Administration

**DEPARTMENT OF COMMERCE**

**Office of the Secretary**

**[13 CFR Part 540]**

**Regional Action Planning Commissions Operations; Administration**

**AGENCY:** The Special Assistant for Regional Development, Office of the Secretary, Department of Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Commerce proposes to amend its existing reuglations on the Regional Action Planning Commissions to include requirements governing Commissions' administrative responsibilities and the administrative requirements they apply to financial assistance recipients. The objectives of the revisions are to include some requirements previously specified in Secretarial Guidelines, to make general improvements in existing regulations, to add administrative procedures based on past experience in implementing Commission programs, and to make the regulations easily understandable. If adopted, the new rules will enable the Commissions to handle their administrative responsibilities in a more efficient, economical manner. The rules will also be consistent with standard Federal fiscal policies and will insure that grantees and contractors fulfill their responsibilities as recipients of public funds. The proposed rules porvide that individual Commissions may adopt internal codes which, when approved by the Secretary, will supplant these regulations.

**DATES:** Comments must be received on or before August 6, 1979.

**ADDRESS:** Send comments to: Office of Regional Development, Room 2092, Main Commerce Building, Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jane Lollis, Office of Regional Development, Room 2092, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: (202) 377–5203.

**SUPPLEMENTARY INFORMATION:** In March, 1978, the Special Assistant for Regional Development of the Department of Commerce and the Federal Cochairmen of the Regional Action Planning Commissions authorized under Title V of the Public Works and Economic Development Act (42 U.S.C. 3181 *et seq.*) initiated discussions regarding the development of minimum administrative policies and procedures applicable to the Regional Commissions. The need for new guidelines or regulations arose for the following reasons:

(1) Basic administrative and program guidelines and rules had not been thoroughly reviewed since 1970 and new requirements affecting Federal programs have been added and others changed;

(2) The commissions are not federal agencies nor are the Federal Cochairmen employees of the Department of Commerce, so that the management procedures of the Department do no apply;

(3) Since the Commissions are neither state nor local governments, they are subject to none of the procedures applicable to these grantees;

(4) To strengthen the State-Federal partnership and provide the necesssary accountability by both partners, clear standards were needed for operation of the commissions;

(5) More comprehensive and precise management procedures were needed to allow for better management by the Commissions and to prevent improprieties.

In order to be enforceable by the Secretary, the rules applicable to the Commissions must be in the form of regulations, developed after public comment; at the same time, any administrative code adopted by the Commissions require both the approval of the Secretary and minimum adherence to the published regulations.

As a result of these discussions, Department of Commerce staff prepared for review a set of draft administrative regulations, which were presented to the Federal Cochairmen in June, 1978. At the request of the Federal Cochairmen, it was agreed in July, 1978, that the Cochairmen also would develop a comprehensive draft document, in consultation with the regional commissions and the Department, incorporating the draft regulations and treating additional areas of internal Commission management. It was further agreed that publications of these regulations would be delayed pending the submission of a draft of the code. On April 9, 1979, the Federal Cochairmen transmitted this draft, entitled the "Uniform Commission Code," to the Secretary, the Commissions and the member Governors for review and comment.

The rules proposed today respond to problems cited in the now completed audit reviews of commission programs and incorporate portions of the Uniform Code which properly may be classified as administrative rules. The Department views this publication as a continuation of the consultation process involving the Department, the Federal Cochairmen, the member Governors, Commission staff, and the public. Also, proposed § 540.201 provides that a commission may adopt its own administrative code which, when approved by the Secretary as meeting the standards of these regulations, will take effect instead of the regulations. The Department anticipates that most Commissions will choose to adopt their own code. We intend to work closely with the Federal Cochairmen and the Governors to insure that any codes include those minimum standards and procedures which will assure sound fiscal management and proper accountability to the public, the Congress and the President. These regulations will be the basic reference for development of the codes in those areas involving the use of Federal funds.

*What is the plan for obtaining public comment?*

By publication of the proposed regulations, the Department invites interested members of the public to submit their comments. Simultaneously, we are forwarding copies of the proposed rules to the Federal Cochairmen and the Governors who are members of the Commissions, the Chairmen of the House and Senate committees and subcommittees charges with oversight of the commission program, and to the Advisory Commission on Intergovernmental Relations and the National Governors Association. Depending upon the nature and extent of comments received, the Department may initiate a second cycle of public comments.

*Are these "significant regulations" as defined in Executive Order 12044?*

Executive order 12044 and Department of Commerce Administrative Order 218–7 set forth requirements for improving significant regulations issued by the Department of Commerce. The Special Assistant for Regional Development has determined that these proposed administrative regulations are not "significant," primarily because: they have limited impact on the public; the standards are the minimum for good management and compliance will not be burdensome; the programmatic authorities of the commissions are not affected; and the standards prescribed will not cause major shifts of resources within a commission's budget. Although Executive Order 12044 does not apply to these regulations, the Department feels that is has met the purposes of the Order by its consideration of the need for

regulations and the examination of alternatives, the previous and proposed consultation procedures, and the adherence to standards of plain English during the drafting process.

*What will these regulations accomplish?*

These regulations reflect the delegation of the Secretary's project approval process and the consequent administrative duties flowing from that delegation. The Regional Development Commissions are joint State/Federal entities authorized to engage in a variety of development planning and financial assistance actitivies. They receive their funding from the Secretary of Commerce, who exercises administrative and program oversight, along with each Commission's Presidentially-appointed Federal Cochairman. Under Executive Order 11386, the Secretary provides Federal policy guidance to the Federal Cochairmen. Under Section 701 of the Public Works and Economic Development Act, 42 U.S.C. 3211, the Secretary is authorized to adopt regulations applicable to the Regional Commissions and the Secretary's functions. The proposed regulations have been drafted under this authority and are applicable to the operations of the Regional Commissions. They do not apply to the operation of each Federal Cochairman's office (or staff), which remains subject to Federal laws and standards.

The application of minimum fiscal and management standards for commissions is an objective shared by the Congress, the Department of Commerce, the Federal Cochairmen and the Governors in improving the accountability for the use of public funds by the commissions. The present administrative standards have proved to the inadequate to meet changing conditions, Federal requirements and authorities since 1970. The Commissions and the Department have found that many problems have arisen due to out-dated or non-existant policies and procedures, especially in the area of grant and contract administration. Accordingly, these proposed regulations are intended to provide minimum standards for Commission's administrative policies and procedures in order to prevent problems and assure that public funds are bing utilized efficiently for the purposes authorized by Congress. These proposed regulations are based on the OMB Circulars A–110 and A–102 relating to grants administration and they impose the same basic requirements on the commissions as the Circulars impose on other federal grantees. Should the Commissions wish they can develop rules for themselves over and above these new requirements.

The proposed regulations are divided into two subparts. Subpart A deals with the transfer of funds to the commissions for their administrative expenses. Subpart B contains minimum administrative requirements applicable to the following Commission activities:

1. Annual Financial Planning and Fiscal Management;
2. Property Management;
3. Records Management;
4. Procurement;
5. Personnel
   a. Duties of the Executive Director
   b. Pay, Benefits and Expenses
   c. Employee Conduct
6. Specific Uses of Funds
7. Commission Financial Assistance
   a. Administrative Standards
   b. Cost Principles
   c. Use of Grants of Contracts
   d. Provisions of Financial Assistance Agreements
   e. Nondiscrimination

Generally, the standards in Subpart B are those which other Federal agencies apply to recipients of financial assistance and with which Federal grantees are familiar.

Accordingly, it is proposed to revise Part 540 of Title 13 CFR to read as follows:

## PART 540—ADMINISTRATION

### Subpart A—Administrative Expense Grants

Sec.

540.101 Authority and purpose.
540.102 Procedure for obtaining administrative expenses.

### Subpart B—General Administrative Provisions Governing Federally Funded Activities and Expenses of the Commissions

540.201 Purpose.
540.202 Financial plan and fiscal management.
540.203 Cost principles applicable to Commissions.
540.204 Records.
540.205 Property management.
540.206 Procurement by Commissions.
540.207 Personnel.
540.208 Prohibition on use of federal funds.
540.209 Administrative requirements for recipients of Commission assistance.
540.210 Nondiscrimination.
540.211 Remedies for noncompliance.

**Authority:** 42 U.S.C. 3161 et seq., 42 U.S.C. 3204, 42 U.S.C. 3211, E.O. 11386, Department Organization Order 15–5.

### Subpart A—Administrative Expense Grants

#### § 540.101 Authority and purpose.

(a) The Secretary is authorized by section 505(b) of the Act (42 U.S.C. 3185(b)) to review and approve the administrative expenses of each Regional Commission, and to pay such expenses as the Secretary approves from Federal funds appropriated for such purposes. For the period ending with the last day of the second full fiscal year following the date of establishment of a Commission, the entire administrative expenses of the Commission shall be paid by the Federal Government. Thereafter 50 per centum of such expenses shall be paid by the Federal Government and 50 per centum by the States in the region, except that the administrative expenses of the Federal Cochairman and the staff shall be paid solely by the Federal Government.

(b) The purpose of this subpart is to outline the procedures by which such administrative expenses will be paid by the Federal Government and to set forth provisions governing the expenditure of those funds.

#### § 540.102 Procedure for obtaining administrative expenses.

(a) As a condition to receiving administrative expense funds from the Federal Government, each Commission through the Federal Cochairman shall submit for approval a financial plan to the Secretary in such form as the Secretary may prescribe.

(b) Such administrative expense funds as are approved shall be made available on a quarterly basis. Approved funds will be deposited into a special trust account established by the U.S. Treasury for the exclusive use of the Regional Commissions. Expenditures from such trust funds shall be made only upon the proper certification of a duly authorized officer of the Commission.

### Subpart B—General Administrative Provisions Governing Federally Funded Activities and Expenses of the Commissions

#### § 540.201 Purpose

(a) The purpose of this part is to assure that all Regional Commissions follow standard and acceptable procedures in administering programs authorized by the Act and assure that they are administratively accountable for the Federal funds which they receive.

(b) A Commission may adopt a code governing the policies and procedures of

that Commission. Any code duly adopted by a Commission and approved by the Secretary as meeting all the requirements of §§ 540.202–209 of these regulations may be used in lieu of such sections. All amendments to such codes shall be approved by the Secretary before they may become effective. A violation of any provision of a code duly adopted by a Commission and approved by the Secretary under this section may be deemed by the Secretary a violation of these regulations and the terms of the grant.

(c) This Subpart shall become effective on October 1, 1979.

**§ 540.202 Financial plan and fiscal management**

(a) *General.* Each fiscal year each Commission shall prepare an annual financial plan detailing the anticipated administrative and program expenses of the Commission for the fiscal year as prescribed by the Secretary including, but not limited to, the items set forth below:

(1) For all program areas (i.e., Supplemental Grants, Technical Assistance, Planning, Demonstration Programs) the financial plan shall specify estimated quarterly and total expenditures by appropriate sub-program areas.

(2) For the administrative expenses of the Commission, the financial plan shall specify estimated quarterly and total expenditures by object class.

On or before August 1 of each year, the Commission shall have prepared and voted approval of a financial plan for the next fiscal year.

(b) After approval by the Commission, such plan shall be transmitted through the Federal Cochairman to the Secretary of Commerce for review and approval.

(c) Federal grant assistance may be used only in the performance of the activities and work program outlined in the Commission's approved financial plan prepared pursuant to this section.

(d) When required by the Secretary of Commerce or the General Accounting Office policies and procedures, the Commission shall select qualified certified public accountants to make an annual audit of the financial accounts of the Commission.

(e) *Federal Fiscal Management.* (1) Each Federal Cochairman, working with the Commission, will prepare: (i) All budget requests for Commission activities in appropriate form for presentation before budget authorities and congressional committees;

(ii) All requested Federal financial plans and other documentation required in order to receive appropriated Federal funds from the Department of Commerce.

(2) Under the delegated authority of the Secretary of Commerce (DOO 15–6), the Federal Cochairman acts as grantor of Federal funds to the Commission and insures adherence to the Act and to all Federal guidelines and regulations applicable to such grants. As the Federal member in the Commission, the Federal Cochairman is a recipient with the State Cochairman and the States, of the Federal funds. He or she, similarly, has trusteeship equal with that of the States' for the Commission's trust fund containing program and administrative monies.

(3) As the Federal member on the Commission, the Federal Cochairman acts to effect transfers of supplemental grant funds to appropriate Federal grant-in-aid agencies for projects approved by the Commission. He or she insures that all applicable requirements of the Public Works and Economic Development Act (42 U.S.C. 3181 *et seq.*) and Commission requirements are adhered to by the recipient Federal grant-in-aid agency.

(f) Cash management (reserved).

**§ 540.203 Cost principles applicable to commissions**

The Secretary and the Federal Cochairman shall apply the principles and standards of Federal Management Circular 74–4 for the purpose of determining the reasonableness, allowability and allocability of costs incurred by the Commission.

**§ 540.204 Records**

(a) The Commissions shall keep such records as will fully disclose the amount and disposition by the recipients of all the funds received from the Federal Government and all other grantors, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources. These records shall also include (1) a record of key action on individual projects which relate to both award and post-award monitoring, evaluation and close-out, in sufficient detail to understand the history of the project and its current status, and (2) such other records as will facilitate an effective audit.

(b) Each Commission shall assure retention of financial records, supporting documents, statistical records, and all other records pertinent to its activities for a minimum period of three years, with the following qualifications:

(1) If any litigation, claim or audit is started before the expiration of the three-year period, the Commission shall retain the records until all litigations, claims or audit findings involving the records have been resolved and the records released by the Secretary.

(2) If a record or set of records is covered by the Records Control Schedule for Regional Action Planning Commissions (U.S. Department of Commerce, March, 1978), the Commissions shall follow the requirements of the Records Control Schedule.

(c) Unless the Records Control Schedule provides another standard, a record retention period starts from one of the following two dates, whichever is later:

(1) The last day of the Federal fiscal year during which the activities occurred for which the record is kept, or

(2) If the record concerns a project, the last day of the Federal fiscal year in which the project was completed.

(d) A Federal Cochairman or the Secretary may transfer certain Commission records to the custody of the Federal Government when either official determines that the records possess long-term value and gives written notice to the Commission.

(e) The Secretary of Commerce, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers and records of a Commission for the purpose of making audits, examinations, excerpts and transcripts.

(f) A Commission shall provide for public access to the records of grantees that are pertinent to a grant. However, the Commission may impose limitations on access when it can demonstrate to the Secretary of Commerce or his or her designee that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal Government.

**§ 540.205 Property management**

(a) Each Commission shall observe the standards in this section relating to the utilization and disposition of property furnished to the Commission by the Federal Government or acquired by the Commission in whole or in part with Federal funds. A Commission may adopt its own standards and procedures governing the management of property acquired by it as long as the provisions of this section are included in the Commission's standards.

(b) The following definitions apply for the purposes of this section:

(1) *Real property.* Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

(2) *Personal property.* Property of any kind except real property, i.e. tangible (having physical existence) or intangible (having no physical existence, such as patents, inventions, and copyrights).

(3) *Nonexpendable personal property.* Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A Commission may use its own definition of non-expendable personal property provided that such definition would at least include all tangible personal property as defined above.

(4) *Expendable personal property.* Expendable personal property refers to all tangible personal property other than nonexpendable property.

(5) *Excess property.* Excess property means Federal property under the control of any Federal agency which, as determined by the head thereof, is no longer required for its needs or discharge of its responsibilities.

(6) *Acquisition cost of purchased nonexpendable personal property.* Acquisition cost of an item of purchased nonexpendable personal property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installations, transportation, taxes, duty, or protective intransit insurance, may be included in the unit acquisition cost.

(c) *Real property.* No Commission shall use any Federal funds provided by the Federal Cochairman or by other Federal sources to purchase real property. This prohibition does not apply to bona fide Commission grantees, whose acquisition of real property is governed by other regulations in this Part. This prohibition has no relationship to a gift or donation of real property under the authority of 42 U.S.C. 3186(a)(6), which provides the administrative powers of Regional Commissions. If a Commission acquires real property from a recipient of Commission assistance, it shall request and abide by disposition instructions from the Federal Cochairman.

(d) *Nonexpendable personal property furnished by the Federal Government.* Title to Federally owned property furnished to a Commission remains vested in the Federal Government.

(e) *Inventory.* Each Commission shall submit annually to the Federal Cochairman an inventory listing of Federally owned property in its custody. When a Commission no longer needs the property, it shall report the property to the Federal Cochairman for further Federal utilization. If the Federal Cochairman or the Federal agency from which the property was acquired has no further need for the property, it shall be declared excess and reported to the General Services Administration. After completion of Federal review, appropriate disposition instructions will be issued to the Commission.

(f) *Other nonexpendable property.* When nonexpendable tanible property is acquired by a Commission in part or in whole with funds provided by the Federal Cochairman, title shall not be taken by the Federal Government but shall vest in the Commission subject to the following conditions:

(1) For items of nonexpendable personal property having a unit acquisition cost of $1000 or more, the Federal Government reserves the right to transfer title to the Federal Government or to another Commission named by the Federal Government. Title will be transferred only after the Federal Cochairman identifies the property to the Commission in writing and gives thirty days notice to the Commission that the Federal Government intends to transfer title. When the Federal Government exercises the right to take title, the personal property shall be subject to the provisions for federally-owned nonexpendable property discussed in paragraphs (d) and (e) of this section.

(2) The Commission shall use the property for the activities for which it was acquired. When it is no longer needed for the original activity, the Commission may use the property in its other activities sponsored with Federal funds.

(3) Use of any property for non-Commission activities is prohibited unlesss approved by the Federal Cochairman and the Secretary. The Federal Cochairman may require a Commission to impose user charges if appropriate. (Department of Commerce Administrative Order 203–5 provides guidance relating to the imposition of user charges.)

(4) When the Commission can no longer use the property:

(i) For nonexpendable property with a unit acquisition cost of less than $1,000, it may sell the property and put the proceeds into the account which funded the purchase;

(ii) For nonexpendable personal property with a unit acquisition cost of $1,000 or more, the Commission shall request disposition instructions from the Federal Cochairman, who shall determine whether the property can be used by the Federal Government. If directed to do so, the Commission shall sell the property and reimburse the Federal Cochairman an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original purchase. The Commission may deduct and retain $100 from the Federal share or ten percent of the proceeds, whichever is greater, for the Commission's selling and handling expenses, but this amount shall not exceed 10 percent of the proceeds.

(g) *Intangible Property.* (1) Inventions and Patents. When a program produces patentable items, patent rights, processes or inventions in whole or in part with funds provided by the Federal Cochairman, such facts shall be promptly and fully reported to the Federal Cochairman. The Federal Cochairman will then determine whether to protect the invention or discovery and how the rights in the invention or discovery, including rights under any patents issued thereon, shall be allocated and administered, consistent with Federal patent policies.

(2) Copyrights. The Commission shall reserve to the Federal Cochairman a royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use and authorize others to use for Government purposes, any copyrighted materials to which the Commission has such rights.

(h) *Property management standards for personal property.* Each Commission shall have property management standards for personal property which include the following minimum requirements:

(1) Property records shall include—

(i) A description of the property;

(ii) Identifying serial numbers;

(iii) Name of the holder of the title to the property;

(iv) Acquisition date, cost and the name of the vendor;

(v) Percentage of Federal participation in the cost of the activity for which the property was acquired;

(vi) Unit acquisition cost; and

(vii) Ultimate disposition data.

(2) Property owned by the Federal Government shall be marked to indicate Federal ownership.

(3) Except as specified in paragraph (f) of this section, each Commission shall take a physical inventory of property and reconcile the results with the

property records at least once every two years. The Commission shall report results, discrepancies and follow-up to the Federal Cochairman, who will take appropriate action.

(i) *Expendable personal property.* Title to expendable personal property shall vest in the Commission upon acquisition.

(j) Any nonexpendable disposition or inventory adjustment of Commission property shall be noted in the applicable financial records.

(k) *Program Income.* The purpose of this section is to provide standards for Commissions to account for program income resulting from activities financed in whole or in part with Federal funds. Program income means gross income earned by a Commission from activities supported by Federal funds. Such earnings exclude interest earned or advances and may include, but will not be limited to, income from service fees, sales, user charges, and royalties.

(1) Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with paragraphs (c) and (f) of this section pertaining to Property Management.

(2) All program income earned during a fiscal year shall be retained by the Commission and, in accordance with the transfer of funds from the Federal Cochairman, shall be:

(i) Added to funds committed to the particular activity from which the program income arose and used to further eligible objectives; or

(ii) Deducted from the total costs of the particular activity for the purpose of determining the next costs on which the Federal share of costs will be based.

(3) Each Commission shall provide for recording the reciept and expenditure of revenues as a part of an activity's transactions when such revenues are specifically earmarked for an activity in accordance with the transfer of funds from the Federal Cochairman.

**§ 540.206 Procurement by commissions.**

This section prescribes minimum standards for use by each Commission in establishing its own procedures for the procurement of supplies, equipment, and other services in part or in whole with funds provided by the Federal Cochairman. These standards are furnished to insure that such materials and service are obtained in an effective and economical manner.

(a) *Commission responsibility.* The standards contained in this section do not relieve a Commission of the contractural responsibilities arising under its contracts. The Commission is the responsible authority, without recourse to the Department of Commerce, or to the Federal Government, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into by the Commission in support of activities under financial assistance provided by the Federal Cochairman, subject to any rights of legal appeal which a contractor may have. This includes, but is not limited to: disputes; claims; protests of awards; source evaluations or other matters of a contractural nature. Matters concerning criminal violation of law are to be referred by the Federal or State Cochairmen, Commission members or the staff immediately to the local, state, and/or Federal authority as may have proper jurisdiction.

(b) *Procurement regulations.* A Commission may adopt its own procurement regulations which reflect any applicable State and local law, rules or regulations, provided that procurement made in part or wholly with Federal funds must adhere to the minimum standards set forth in this section.

(c) *Code of conduct for procurement.* Each Commission shall adopt a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts. The Commission shall include in this code the standards for employees required by § 540.207 of these regulations.

(d) *Extent of competition.* A Commission shall conduct all procurement transactions (regardless of whether by formal advertising or by negotiation and without regard to dollar value) in a manner that provides maximum open and free competition consistent with these regulations. A Commission shall not award a contract when competition is restricted or eliminated. Examples of restriction of competition or restraint of trade include unreasonable requirements placed on firms in order for them to qualify to do business or situations involving noncompetitive practices among firms. In order to insure objective contractor performance and eliminate unfair competitive advantage, a contractor that develops or drafts for a particular procurement specifications; requirements; a statement of work; or invitations for bids or requests for proposals shall be excluded from competing for and performing work under the ensuing procurement except when the Federal Cochairman gives written approval to a Commission's request to waive this requirement for a particular procurement. A request for a waiver shall include at least the reason for the waiver and the benefits expected from the waiver compared with the required procedures.

(e) *Procurement procedures.* Each Commission shall establish procurement procedures which provide for, at a minimum, the following procedural requirements:

(1) Before making an award, Commission officials shall review proposed procurement actions to avoid purchasing unnecessary or duplicative items. Where appropriate, these officials shall make an analysis of lease and purchase alternatives to determine which procurement approach would result in the most economical, practical procurement.

(2) Solicitations of offers, whether by formal advertising or negotiations, shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to the procured. Such description shall not, in competitive procurement, contain features which unduly restrict competition.

(3) Each Commission shall make positive efforts to utilize small business concerns and minority owned business enterprises as sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts utilizing Federal funds.

A Commission must obtain the approval of the Federal Cochairman and the Secretary prior to beginning any steps to procure for itself construction or repair work to realty. At the time of approval, these officials shall provide appropriate guidance to the Commission governing procurement procedures for construction or repair contracts.

(f) *Type of procuring instruments.* The type of procuring instruments used (i.e., fixed price contracts, cost reimbursable contracts, purchase order, etc.), shall be appropriate for the particular procurement and for promoting the best interest of the Commission program involved. (41 CFR 1–3.403 may be used for guidance in selecting the appropriate contract type.) The "cost-plus-a-percentage-of-cost-fee" method of contracting shall not be used.

(g) *Selection of procurement method.*

(1) Whenever feasible, formal advertising, with adequate purchase description, sealed bids, and public openings shall be the preferred method of procurement. However, procurements of $10,000 or less need not be so advertised unless otherwise required by

a State law or regulations. Where such advertised bids are obtained, the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the Commission, price and other factors considered. (Factors such as discounts, transportation costs, taxes and life cycle costs may be considered in determining the lowest bid.) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the Commission. Any or all bids may be rejected when it is in the Commission's interest to do so, and such rejections are in accordance with applicable State law, rules, and regulations.

(2) The Commission may negotiate if it is impracticable and unfeasible to use formal advertising. Generally, the Commission may negotiate procurements if:

(i) The public exigency will not permit the delay incident to advertising;

(ii) The material or service to be procured is available from only one person or firm;

(iii) The aggregate amount involved does not exceed $10,000;

(iv) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution;

(v) The material or services are to be procured and used outside the limits of the United States and its possessions;

(vi) No acceptable bids have been received after formal advertising. (In such cases, notification of intention to negotiate and reasonable opportunity to negotiate must be given to each responsible bidder who submitted a bid in response to the invitation for bids.);

(vii) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture. (Notwithstanding the existence of circumstances justifying negotiation, competition should be obtained to the maximum extent practicable.)

(3) All contemplated sole source procurements where the aggregate expenditure is expected to exceed $10,000 shall be referred to the Federal Cochairman for prior written approval. The file shall include the justification for the sole source procurement and the Federal Cochairmen's written approval.

(h) *Responsible contractors.* A Commission shall award a contract only to a responsible contractor who possesses the demonstrated ability to perform successfully under the terms and conditions of a proposed procurement. The Commission shall give consideration to such matters as contractor integrity, record of past performance, and financial and technical resources or accessibility to necessary resources.

(i) *Commission procurement records.* Each Commission shall maintain records or files sufficient to detail the significant history of a procurement. These records or files shall include, but are not necessarily limited to, information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection, and the basis for the cost or price negotiated including the basis for the decision that the cost was reasonable, that the product could be delivered for the price and within the time schedule proposed, evidence of the administering and monitoring actions during contract administration.

(j) *Contract administration.* Each commission shall maintain a system for contract administration to ensure that contractors conform with the terms, conditions, and specifications of the contract or purchase order including modifications, to identify and endeavor to resolve conditions that might adversely affect the Commission's interest, and to ensure that the Commission makes adequate and timely followups of all purchases.

(k) *Contract provisions.* Each Commission shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all procurement contracts or, where applicable, purchase orders:

(1) Contracts shall contain contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contracts violate or breach contract terms, and provide for such sanctions, penalties, and remedial actions as may be appropriate.

(2) All contracts in excess of $10,000 shall contain suitable provisions for termination by the Commission including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded by a Commission and its contractors as subgrantees having a value of more than $10,000 shall contain a provision requiring compliance with Executive Order 11264, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60–1).

(4) Where applicable, all procurements by a Commission in excess of $2,500 that involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327–330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week.

(5) All contracts (except those of $10,000 or less) awarded by a Commission shall include a provision to the effect that the Commission, the Federal Cochairman, the Secretary of Commerce and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific program for the purpose of making audit, examination, excerpts, and transcriptions.

(6) A Commission shall require its contractors to maintain all required records for three years after the Commission makes final payments.

(7) Contracts of amounts in excess of $100,000 shall contain a provision that requires the contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, (42 USC 1857 et seq.), and the Federal Water Pollution Control Act (13 USC 1252 et seq.), as amended. A Commission shall report violations to the Federal Cochairman, and the Regional Office of the Environmental Protection Agency.

(l) *Technical Evaluations and Cost or Price analysis.* Each commission shall perform and document in the project files a technical evaluation and a cost or price analysis in connection with every negotiated procurement action including

contract modifications. 41 CFR 1–1.305, 306 and 307 provide guidance as to how to perform a technical evaluation. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability. The method and degree of analysis, however, is dependent on the facts surrounding the particular procurement. The Commission shall perform cost analysis when the offeror is required to submit the elements of his/her estimated cost for sole source procurements, and when adequate price competition is lacking, e.g., when only a single bid is received and it is inpossible to perform a valid price analysis. Price analysis shall be used in all other instances to determine the reasonableness of the proposed contract price.

(m) *Federal review of proposed contracts.* The Secretary of Commerce or his or her designee may require Department of Commerce approval of proposed contracts and related procurement documents (such as requests for proposal and invitations for bids) whenever a Commission's procurement procedures do not comply with this section and the Federal Cochairman and the Commission are notified in writing as to what corrective action is needed. The Secretary shall send copies of such notifications to the Office of Management and Budget.

(n) *Cooperative intergovernmental agreements.*

(1) To foster greater economy and efficiency in public procurement, each Commission is encouraged to enter into cooperative Federal, Commission or State intergovernmental agreements for procurement and/or use of common goods and services. Before such cooperative purchasing agreements are entered into, a Commission shall determine that joint purchases will be, or are being made, in accordance with the procurement standards in this section.

(2) To benefit from federal purchasing resources, a Commission's procurement of supplies, materials, equipment, furniture and services should be channeled through the central procurement office of the Department of Commerce.

**§ 540.207 Personnel.**

(a) An Executive Director of a Commission is chief administrative officer of the Commission. Subject to the policies and procedures adopted by the Commission and any applicable laws, regulations and guidelines, an Executive Director is responsible for the efficient administrative operation of the Commission and is responsible to the State and Federal Cochairmen of the Commission. Each commission shall assign such duties to the Executive Director as it deems appropriate, but, at a minimum the Executive Director shall have the authority to perform the following duties:

(1) To supervise and manage the Commission staff in carrying out day-to-day operations and to assure that proper administrative functions are accomplished;

(2) To develop the internal administrative structure of the Commission's staff and to assign functions and duties to employees;

(3) In accordance with Commission policies and after any required approval, to develop and execute for an on behalf of the Commission—

(i) Contracts and purchase orders;

(ii) Grant agreements;

(iii) Leases;

(iv) Personnel actions;

(v) Travel orders;

(vi) Any certifications required for the payment of legitimate expenses;

(4) To insure that Commission procedures and practices reflect applicable ethics requirements, codes of conduct and any laws applicable to Commission officials and employees;

(5) To develop a procurement system consistent with applicable requirements and Commission policies;

(6) To prepare an annual Commission budget for presentation to the Commission and such others as directed by the Commission;

(7) To accept, on behalf of the Commission, funds from the Federal Government and the member States;

(8) To develop a system of budget control to insure that obligations never exceed available unencumbered funds.

(b) Each Commission shall provide for legal assistance to assure adequate preparation and review of documents requiring Commission action and qualified legal advice to the Commission and its staff.

(c) An Executive Director of a Commission, and such other officers and employees as the Commission may determine, shall be bonded in such form and amounts as are determined by the Commission.

(d) *Pay, Benefits, Expenses.* (1) Rate of Compensation—The rate of compensation for positions paid in part or in whole from funds provided to a Commission by the Federal Government shall not exceed the rate paid by the Federal Government for similar positions. Each Commission shall establish for Commission employees experience and education requirements comparable to the Federal requirements (or the requirements of the participating State chosen in paragraph (d)(2)(i) of this section) for similar positions. Each Commission shall keep an up-to-date position description for each of its authorized positions, ensure that it is applicable and made available to the employee occupying that position.

(2) Level of Benefits—(i) No Commission shall establish benefits or adopt benefit policies which exceed the policies or levels of benefits provided by the Federal Government to its employees, unless a Commission contracts with a participating State Government for inclusion in a suitable retirement and employee benefit system as provided in 42 U.S.C. 3186(a)(5). Benefits include, but are not limited to, annual and sick leave and other leave, health insurance, life insurance, and retirement benefits.

(ii) No Commission shall permit any employee to carry forward into any calendar year more than 30 days of accumulated annual leave, computed at the beginning of the first complete pay period in the year.

(iii) Any employee who has been advanced annual or sick leave and who terminates his employment before repaying the advance shall make a payment to the Commission for the amount of advanced annual or sick leave outstanding.

(iv) No Commission shall pay or reimburse any employee for any sick leave accrued during service with the Commission, with the Federal Government, or with any State or local government.

(3) Number and Cost of Employees. Each Commission shall list in the annual financial plan the funding source for all persons employed or to be employed by the Commission for the period covered by the financial plan. Each Commission shall limit both the number of persons employed by it and the amount of funds spent for personnel costs to the number and amount set forth in its financial plan as approved by the Secretary. This limitation does not apply to additional employees not in any way compensated from funds provided to a Commission by the Federal Government.

(4) Specific Salary Prohibitions. No Commission shall pay a salary to or supplement, or make any contribution to, the salary of a State Member of a Commission, or a State Alternate, or any person who acts as a State Alternate at

any time. No persons detailed to serve a Commission under authority of Section 3186 (a)(4) of Title 42, United States Code, relating to Commissions' administrative powers, shall receive any salary or any contribution to or supplementation of salary for his services on the Commission from any source other than one of the following:

(i) The State, local, or intergovernmental department or agency from which the person was detailed; or

(ii) The Commission. No Commission shall use any funds provided by the Federal Cochairman for any purpose in order to circumvent these prohibitions. State Members of a Commission, State Alternates, persons acting as State Alternates at any time and persons on detail to a Commission are referred to Section 3188 (c), Title 42, United States Code, to determine their responsibilities and potential liabilities.

(5) Travel Expenses. Reimbursement for travel costs, including transportation, food and lodging costs, incurred by all Commission personnel in performance of their official duties while away from their regular place of duty, shall not exceed the reimbursement provided by the standard travel regulations of the United States Department of Commerce. Each Commission shall adopt as its own policies for authorizing travel the standard travel requlations of the Department of Commerce, contained in Departmental Administrative Order 204–1, except that for air travel.

(i) For a Commission which has an Executive Director, the Executive Director shall authorize and approve first-class air travel and maintain a record of the reason for authorized air travel for a period of three years. No less than every six months (in September and March) the Executive Director shall report to the Federal Cochairman any first-class air travel by Commission employees.

(ii) For a Commission which has no Executive Director, the Federal Cochairman shall be the official to authorize an approve first-class air travel. The Federal Cochairman shall maintain a record of the reason for all authorized air travel for a period of three years.

(6) Payroll and Attendance. Each Commission shall keep time and attendance records on all persons employed by it to assure proper control over the recording of attendance, overtime, sick and annual leave and other absences from duty and the proper distribution of hours by project. Each payroll period, an authorized Commission supervisor or official shall verify, approve and sign the time and attendance records.

(e) *Conduct.* (1) Standards for Employees—Each Commission shall adopt standards governing the conduct and reponsibilities of its officers and employees. These standards shall incorporate, but not be limited to, all standards made applicable to Commission officers and employees by Federal or State laws, regulations and policies, including the requirements of these regulations. These standards, at a minimum, shall address the following subjects:

(i) Conflicts of interest;

(ii) Outside financial interests;

(iii) Persons engaged in the award and administration of contracts and grants;

(iv) Gifts;

(v) Entertainment;

(vi) Honoraria;

(vii) Reimbursement for expenses;

(viii) Travel and related expenses;

(ix) Use of public funds and public facilities;

(x) Political activities;

(xi) Use and disclosure of official information;

(xii) Non-discrimination;

(xiii) Nepotism;

(xiv) Lobbying.

(2) *Nepotism.* No Commission supervisor or officer shall appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the Commission in which he or she serves or exercises jurisdiction or control, any individual who is a relative of the supervisor or officer. From the effective date of this regulation, any individual appointed, employed, promoted or advanced in violation of this section shall not receive any pay derived in whole or in part from funds provided to a Commission by the Federal Government. Relative means an individual who is related to a supervisor or officer as father, mother, son, daughter, brother, sister, uncle, husband, wife, father-in-law, son-in-law, sister-in-law, brother-in-law, stepbrother, stepsister, half brother, or half sister.

(3) *Personal financial interests.* (i) Except as provided in paragraph (e)(3)(ii) of this section, no State Member, Alternate, officer, employee or agent of a Commission shall participate in any proceeding, application, award, selection, determination, grant, contract, procurement, claim, or any other activity in which, to his knowledge, at least one of the following has a financial interest that might cause a conflict of interest or create the appearance of a conflict of interest:

(A) The person himself or herself;

(B) His or her spouse;

(C) His or her minor child;

(D) His or her business partner;

(E) Any organization (other than a State or political subdivision of the State) which employs any person listed in paragraph (e)(3)(i) (A), (B), (C) or (D) of this section;

(F) Any organization (other than a State or political subdivision of the State) in which the person is serving as officer, director, trustee, partner or employee;

(G) Any person with whom he or she is serving as officer, director, trustee, partner or employee in any organization;

(H) Any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment.

(ii) Exceptions to paragraph (e)(3)(i) of this section may be obtained if the State Member, Alternate, person acting as an Alternate, officer, employee or agent—

(A) First advises the Commission of the nature and circumstances of the activity;

(B) Makes full disclosure of the financial interest in writing; and

(C) Receives *in advance* a written determination made by the full Commission that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Commission expects from the individual involved.

The Commission shall forward a copy of each of the determinations made under this Rule to the Secretary.

(iii) A Commission may declare void and rescind any contract or other agreement in relation to which it finds that paragraph (e)(3)(i) of this section has been violated. If a Commission chooses not to void and rescind a contract or agreement under these circumstances, it shall forward to the Secretary a report which states:

(A) The factual situation surrounding the contract or agreement;

(B) The personal financial interest involved; and

(C) The reasons for not voiding the contract or agreement.

(iv) State Members, State Alternates, persons acting as State Alternates, officers, and employees of a Commission should refer to 42 U.S.C. 3188, which details prohibitions and penalties for certain personal financial interests.

(v) Paragraph (e)(3) of this section, does not apply to—

(A) The Federal Cochairman; or

(B) Any Federal officer or employee detailed to a Commission pursuant to 42 U.S.C. (a)(3).

These persons remain subject to Sections 202 through 209 of Title 18, United States Code, which proscribe bribery, graft and certain conflicts of interest by Federal officers and employees. A Commission may void and rescind any contract or other agreement in relation to which it finds that any provision of 18 U.S.C. 202–209 has been violated.

(4) *Statement of employment and financial interests.* (i) Each Commission shall identify in its code, regulations or by-laws those officer and employee positions which are subject to the requirement of filing a statement of employment and financial interests.

(ii) At a minimum, each Commission shall require statements of employment and financial interests from the following employees:

(A) The Executive Director; and

(B) Employees in positions whose basic duties and responsibilities require the person to exercise judgment in making a Commission decision or in taking Commission action on

(*1*) Contracting or procurement; or

(*2*) Administering or monitoring grants or contracts.

(iii) A Commission may require other employees to submit a statement if it determines they are in positions having duties and responsibilities which require them to report their employment and financial interests in order to avoid involvement in a possible conflicts of interest situation and to protect the integrity of the Commission.

(iv) At a minimum, the required statement of employment and financial interest shall include the following:

(A) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations and education or other institutions—

(*1*) With which the employee is connected as an employee, officer, owner, director, trustee, partner, adviser, or consultant; or

(*2*) In which he or she has any continuing financial interests, through a pension or retirement plan, shared income, or otherwise, as a result of any current or prior employment or business or professionals association; or

(*3*) In which he or she has any financial interest through the ownership of stocks, bonds, or other securities;

(B) A list of the names of creditors, other than those to whom the employee may be indebted by reason of a mortgage on a property which he or she occupies as a personal residence or to whom he or she may be indebted for current and ordinary household and living expenses; and

(C) A list of interests in real property or rights in lands, including mortgages and trusts, other than property which he or she occupies as a personal residents.

(v) An employee required to submit a statement of employment and financial interests under these regulations shall submit that statement to the Federal Cochairman no later than 90 days after the effective date of these regulations if employed on or before that effective date, or 30 days after his entrance on duty.

(vi) Each employee shall report to the Federal Cochairman changes in, or additions to the information in an employee's statement of employment and financial interests on Sept. 30 each year. If there are no changes or additions, a report indicating that fact is required. Notwithstanding the filing of the annual supplementary statement, each employee shall at all times avoid acquiring a financial interest that could result, or taking any action that would result, in a violation of the financial interest and conflicts-of interest provisions of these regulations and the standards adopted by the Commission.

(vii) The interest of a spouse, a minor child, or a blood relation who is a full-time resident of the employee's immediate household is considered to be an interest of the employee.

(viii) If any information required to be included on a statement or a supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information on his behalf.

(ix) A Commission shall not require an employee to submit in a statement or supplementary statement any information about the employee's connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic or political organization, or a similar organization not conducted as a business enterprise. For this purpose, educational and other institutions doing research or related work involving grants of money from or contracts with the Commission are considered business enterprises and are required to be included in an employee's statement of employment and financial interests.

(x) The Federal Cochairman shall hold each statement of employment and financial interests, and each supplemental statement, in confidence. The Federal Cochairman, the State Cochairman, and the Secretary are authorized to review and retain the filed statements. They shall not allow access to, or information to be disclosed from, a statement for any reason other than to carry out the purpose of this section. They shall not disclose information from a statement except as the Federal Cochairman determines for good cause shown.

(xi) The Federal Cochairman and the State Cochairman shall review statements filed under this Section to ascertain whether or not there exists any conflict or apparent conflict between the personal interest of any employee and the interest of the Commission. If any information or any statement discloses a conflict or apparent conflict, the Federal Cochairman shall advise the employee of the apparent conflict and give him an opportunity to explain it.

(xii) The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for or in derogation of, any similar requirement imposed by any law, or the regulations of any other Federal agency.

(xiii) If necessary, the Federal Cochairman shall take immediate remedial action to resolve any apparent conflict of interest, including changing the employee's assigned duties, disqualifying the employee for a particular assignment, or requesting the employee to divest himself of his conflicting interest. The Federal Cochairman shall refer for immediate processing cases involving suspension in accordance with § 540.207(e)(7).

(5) *Gifts, entertainment.* (i) A Commission's standards for employees on gifts and entertainment, at a minimum, shall contain the following provisions:

(A) Except as provided in paragraph(e)(5)(i)(B) of this section, no Commission employee or officer shall accept or solicit, directly or indirectly, any gift, gratuity, entertainment, loan or any other thing of monetary value, from a person who—

(*1*) Has or seeks contracts or grant relations or other business or financial relations with the Commission; or

(*2*) Has interests that may be substantially affected by the performance or nonperformance of the employee's or officer's official duty.

(B) Nothing in paragraph (e)(5)(i)(A) of this section shall prohibit—

(*1*) The solicitation or acceptance of any gift, gratuity, favor, loan, entertainment or any other thing of value which arises out of obvious family or personal relationships, such as those between the parents, children or spouse of the employee and the employee, so

long as it is clear from the circumstances that it is the family or personal relationship rather than the business of the person concerned that is the motivating factor;

(2) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) The acceptance of loans from banks or other financial insitutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value.

(ii) It is the intent of these requirements that an employee avoid any action, whether or not specifically prohibited, which might result in or create the appearance of using public office for private gain, giving preferential treatment to any person, impeding Commission efficiency or economy, losing complete independence or impartiality, making a Commission decision outside official channels, or affecting adversely the confidence of the public in the integrity of the Commission.

(6) *Other provisions.* (i) An employee shall not engage in outside employment or other activity not compatible with the full and proper discharge of the duties and responsibilities of his Commission employment.

(ii) For the purpose of furthering a private interest, an employee shall not, directly or indirectly use, or allow the use of official information obtained through or in connection with his Commission employment which has not been made available to the general public.

(iii) An employee shall not directly or indirectly use, or allow the use of, Commission property of any kind including property leased to the Commission, for other than officially approved activities. An employee has a positive duty to protect and conserve Commission property, including equipment, supplies, and other property entrusted or issued to him.

(7) *Reports, sanctions, appeals.* (i) Whenever it is reported that an employee has committed any act prohibited under any section of this Subpart or has any unresolved conflict of interest which may warrant the imposition of any of the sanctions provided in this Section, the reported violation or conflict shall be processed in substantial compliance with the procedure established in paragraphs (e)(7)(ii) through (iv) of this section. This procedure shall be in addition to any other procedure or sanction required by law.

(ii) Any report under paragraph (e)(7)(i) of this section shall be investigated by Commission staff or may be referred by the Federal Cochairman to the Department of Commerce for investigation. Any investigation shall have as its objective the development of all relevant and material facts and circumstances for the information of the Federal Cochairman and the State Cochairman. The results of the investigation shall be reported to the Federal Cochairman, the State Cochairman, and the Secretary. The two Cochairmen shall study all presented evidence and recommendations and allow the employee involved to present any evidence or statements. After consideration of all material, the two Cochairmen shall determine whether the employee has engaged in a prohibited activity or has an unresolved conflict of interest.

(iii) Any person subject to the Conduct Standards in this Section, who is determined under the procedure in paragraph (e)(7)(ii) of this section to have committed any act prohibited under any Section of this Chapter or to have unresolved conflict of interest which, it is deemed, impairs the Commission's integrity or public confidence in the Commission, shall be dismissed from employment with the Commission or shall undergo suspension (without pay), reprimand, loss of promotion or other sanction as the Federal Cochairman and the State Cochairman jointly deem suitable to impose or require under the circumstances. Such decision may be appealed as provided in the next paragraph.

(iv) An employee subjected to a sanction may appeal a decision of the Cochairmen to the full Commission for a final decision. During the pendency of the appeal, the decision of the Cochairmen shall not be implemented.

(8) *Notice to employees.* The contents of all conduct standards given in or required by this Subpart shall be brought to the attention of the employees of each Commission. Each employee shall certify in writing to the Executive Director that he has read and is familiar with the standards contained in this Subpart and the standards adopted by the Commission pursuant to this Subpart.

**§ 540.208 Prohibition on use of Federal funds.**

(a) No Commission shall use any funds received from the Federal Government to make, supplement or guarantee a loan.

(b) No part of the Federal grant funds shall be used by any recipient, either directly or indirectly, to assist, solicit, or encourage the relocating of any business establishment from one area to another or to assist, solicit, or encourage the transfer of contract or subcontract work which would result in a transfer of jobs causing unemployment in the area where work was previously performed, or to pay any part of the compensation or expense of employees who may at any time engage in such activities.

(c) No Commission shall use any funds received from the Federal Government for entertainment or gifts.

**§ 540.209 Administrative requirements for recipients of Commission assistance.**

(a) Each Commission shall adopt and apply the following standards for its recipients of financial assistance:

(1) For Grants to State and Local Governments, the following attachments in Office of Management and Budget (OMB) Circular A-102 (revised as of August 24, 1977)—

(i) A—Cash Depositories;

(ii) B—Bonding and Insurance;

(iii) C—Retention and Custodial Requirements for Records;

(iv) E—Program Income;

(v) F—Matching Share;

(vi) G—Standards for Grantee Financial Management Systems;

(vii) H—Financial Reporting Requirements;

(viii) I—Monitoring and Reporting Program In Performance;

(ix) K—Budget Revision Procedures;

(x) L—Grant Close-out Procedures;

(xi) N—Property Management Standards; and

(xii) O—Procurement Standards.

(2) For grants to and agreements with institutions of higher education, hospitals, and other nonprofit organizations, the following attachments in OMB Circular A-110—

(i) A—Cash Depositories;

(ii) B—Bonding and Insurance;

(iii) C—Retention and Custodial Requirements for Records;

(iv) D—Program Income;

(v)E—Cost Sharing and Matching;

(vi) F—Standards for Financial Management Systems;

(vii) G—Financial Reporting Requirements;

(viii) H—Monitoring and Reporting Program Performance;

(ix) J—Revision of Financial Plans;

(x) K—Closeout Procedures;

(xi) L—Suspension and Termination Procedures;

(xii) N—Property Management Standards; and

(xiii)O—Procurement Standards.

(b) The Federal Cochairman may grant exceptions from the requirements of the attachments listed in paragraphs (a) (1) and (a) (2) of this section when an exception is not prohibited under existing laws and in the best interests of the Commission or necessary to prevent undue hardships or inequity on a grantee or contractor. The Federal Cochairman shall inform the Office of Management and Budget (OMB) in writing with a copy to the Secretary, before granting a request by a Commission for an exception for a Commission financial assistance recipient or class of recipients. (It is the stated policy of the Office of Management and Budget to permit exceptions from Circular requirements only in unusual cases and the Federal Cochairmen are expected to reflect this in their decision.)

(c) If a Commission adopts a form which is a substitute for or is a deviation from a form specified in the attachments listed in paragraph (a) of this section, the Federal Cochairman shall inform OMB in writing with a copy to the Secretary, before the form is put into effect or use.

(d) *Cost principles and standards.* (1) *State and local governments.* When a Commission enters into a grant or contract with a State or local government, the Commission shall apply the principles and standards of Federal Management Circular (FMC) 74–4 for determining reasonableness, allowability and allocability of costs. Under this requirement, references in FMC 74–4 to the term Federal Government or Federal grantor agency shall be read as references to the Regional Commission. Except as authorized in Section C of Attachment B of the Circular, no Commission shall grant exceptions to the principles and standards of FMC 74–4 for any grantee or contractor.

(2) *Educational institutions.* When a Commission enters into a grant or contract with an educational institution, it shall apply the provisions of OMB Circular A–21 (formerly FMC 73–8) for determining the reasonableness, allowability and allocability of costs. Under this requirement, references in A–21 to the Federal Government or to the Federal grantor agency shall be read as references to the Regional Commission.

(3) When a Commission enter into any contract with an individual or a commercial organization, it shall apply the provisions of Subpart 1–15.2 of the Federal Procurement Regulations (41 CFR Subpart 1–15.2) for determining the reasonableness, allowability, and allocability of costs. Under this requirement, references in Subpart 1–15.2 to the term Government, Federal Government or Federal agency shall be read as references to the Regional Commission.

(4) When a Commission enters into an agreement with a nonprofit organization not covered under paragraphs (g)(1) or (2) of this section, it shall apply the provisions of Department of Commerce Cost Principles for Non-Profit Organizations or an equivalent set of Federal cost principles (such as 41 CFR 1–15.2) for determining the reasonableness, allowability and allocability of costs. Under this requirement, references in this document to the term Department, Government, Federal Government or Federal agency shall be read as references to the Regional Commission.

(5) Each Commission shall incorporate the appropriate requirements of this Section into the terms of its grants, contracts and agreements.

(e) In any specific situation involving the transfer of funds to a recipient, a Commission must decide whether to use a grant instrument or a contract.

(1) If the principal purpose of the instrument is the acquisition, by purchase, lease or barter, of property or services for the direct benefit or use of the Commission, the Commission shall use a contract and may not use a grant.

(2) If the principal purpose of the instrument is financial assistance to the recipient in order to accomplish a public purpose of support or stimulation authorized by Title V of the Public Works and Economic Development Act, the Commission should use a grant and not a contract. However, the Executive Director may determine in a specific instance that the use of a contract is appropriate.

(f) Financial assistance activities of a Commission shall meet the following requirements:

(1) A grant or contrat may be entered into by a Commission only for a purpose or purposes authorized by Title V of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3181 *et seq.*

(2) No grant or contract shall be awarded unless there is an approved application from the proposed recipient which discloses how the funds will be used. Each grant or contract shall contain a description of the work to be accomplished under the grant or contract (the "scope of work"). The scope of work shall identify the specific activities which are supported by the financial assistance and the final work products, if any. Each grant or contract shall identify the goals and objectives of the assistance and shall be supported by approved plans, budgets and other information submitted to the Commission by the applicant/recipient which indicate how the funds will meet these objectives and enable the Commission to perform technical evaluations and cost/price analyses.

(3) No grant or contract may be entered into by a Commission for the purpose of funding an individual's salaried position in a unit of government or for paying the salary of any individual. However, all or any part of the compensation (and allowable benefits) of an individual may be a cost charged to grant or contract funds as an expense of carrying out specific duties detailed in the scope of work for the grant or contract. The amount of cost charged will depend upon the services rendered and the extent of benefits received pursuant to grant or contract objectives in accordance with applicable cost principles. Under no circumstances shall grant or contract funds be used to pay any portion of the compensation of a Governor or an Alternate or any person who acts as an Alternate.

(4) A grant or contract with a unit of State or local government shall not provide for payments to cover expenses for general activities which the unit normally incurs to carry out its general governmental responsibilities. Such assistance would be an unauthorized subsidy. A grant or contract shall be for specific, defined tasks or projects.

(5) The Commission shall assess the results of each completed project in relation to its established objectives, measure the overall results of program accomplishments in terms of contributions to each Commission's basic goals and objectives and assure that the evaluation activities are fully documented in the project files. Monitoring and final evaluation and approval of performance under a grant or contract shall not be delegated or assigned to a person who is not an official or employee of the Commission.

(g) *Audit resolutions and project closeout.* (reserved)

(h) Each Commission shall adopt the following:

(1) Procedures for keeping apprised of the status of each project assisted;

(2) Procedures requiring that contract or grant changes be accomplished by formal amendment of the agreement.

that there be adequate consideration for the change if it involves increased funding, and that project files are kept up to date;

(3) Procedures to ensure that payments to recipients do not exceed identified requirements;

(4) Policies for differentiating administrative expenses from programmatic expenditures; and

(5) Requirements for the establishment and maintenance of an official file on each project.

(i) The Secretary shall assist each Commission, when appropriate, to adopt any regulations necessary to implement the provisions of this Section.

**§ 540.210 Nondiscrimination**

The provisions of Title IV of the Civil Rights Act of 1964 shall apply to the Commission as an agency empowered to extend Federal financial assistance and as a recipient of such assistance. The Commission shall adopt as its own the Regulations of the Department of Commerce implementing Title VI (15 CFR, Subtitle A, Part 8). The Commission and every program or activity receiving Federal assistance directly or indirectly from or through the Commission, shall be subject to an comply with those Regulations. Since a primary objective of such Federal financial assistance is to provide employment, the employment practices provisions of those Regulations shall be applicable to the Commission and to its Federally assisted programs and activities. The Commission may issue rules, regulations, orders and instructions to further implement Title VI and the Regulations, and may obtain assistance from the Department of Commerce, with its concurrence, to aid the Commission and the Federal Cochairman in carrying out its responsibilities under Title VI and the Regulations.

**§ 540.211 Remedies for noncompliance**

In appropriate circumstances, and after due notice and adequate opportunity for hearing, the Secretary may suspend the financial assistance provided under Title V of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3181 *et seq.*, upon the formal finding that the Commission is in violation of the terms of the grant offer or the provisions of these Regulations.

**Robert M. Rauner,**

*Deputy, Office of Regional Development; Acting Special Assistant for Regional Development.*

June 1, 1979.

[FR Doc. 79-17616 Filed 6-6-79; 8:45 am]

BILLING CODE 3510-19-M

federal register

Thursday
June 7, 1979

Part IV

# Department of Transportation

Materials Transportation Bureau

## Display of Hazardous Materials Identification Numbers; Improved Emergency Response Capability; Proposed Rule

**DEPARTMENT OF TRANSPORTATION**

**Materials Transportation Bureau**

**[49 CFR Part 172]**

**[Docket No. HM-126A: Notice No. 79-9]**

## Display of Hazardous Materials Identification Numbers; Improved Emergency Response Capability

**AGENCY:** Materials Transportation Bureau, Research and Special Programs. Administration, Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Materials Transportation Bureau (MTB) proposes to adopt a numerical identification system for hazardous materials transported in commerce. These identification numbers would be required to be displayed on shipping papers and packages in association with the required hazardous material descriptions. They would be required to be displayed on orange panels affixed to portble tanks, cargo tanks, and tank cars containing hazardous meterials. The purpose of the proposed regulations is to improve the capability of emergency response personnel (fire, police, et al) to quickly identify hazardous materials and to assure the accurate transmission of information to and from the scenes of accidents involving hazardous materials.

**DATES:** Comments must be received on or before August 7, 1979.

**ADDRESS COMMENTS TO:** Dockets Branch, Materials Transportation Bureau, Washington, D.C. 20590 (telephone: 202-472-2726). It is requested that five copies be submitted.

**FOR FURTHER INFORMATION CONTACT:** L. Metcalfe, Standards Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590, 202-426-0656.

**SUPPLEMENTARY INFORMATION:** This Notice proposes the adoption of an identification numbering system for hazardous materials based primarily on the system adopted for worldwide use by the United Nations Committee of Experts on the Transport of Dangerous Goods. Use of the identification numbering system will provide for improved identification of hazardous materials and the communication of information concerning the handling of such materials when they are involved in transportation accidents. Display of identification numbers would be required in connection with descriptions on shipping papers, on packages of 110 gallons capacity or less, and would be required on orange panels affixed to portable tanks, cargo tanks and tank cars. The MTB believes the use of identification numbers will provide an improved capability to quickly obtain and transmit accurate information about hazardous materials involved in accidents in order to obtain information necessary to deal with such accidents. Another element the MTB believes to be important in providing an improved emergency response capability is a manual it has under development. It will associate identification numbers with brief, concise instructions that will assist emergency personnel during the first minutes of a hazardous materials accident.

Many expressions of interest concerning the need to improve hazardous materials emergency response capabilities have been received from members of Congress, the National Transportation Safety Board, the Secretary of Transportation's Hazardous Materials Task Force, state officials, and most important, fire, police and other emergency service organizations. The MTB believes that the improvements proposed in this Notice will, if adopted, provide the basis for an improved emergency response capability that is not presently available through direct use of technical names; e.g., hexadecyltrichlorosilane (UN 1781), to identify hazardous materials and accurately and quickly communicate information about them.

The primary drafters of this Notice are Alan I. Roberts and Lee E. Metcalfe of the Materials Transportation Bureau.

### Background

On June 25, 1975, the Hazardous Materials Regulations Board (HMRB) published in the **Federal Register** (40 FR 26688, Docket HM-126) a request for public comment on hazard information systems. The request listed nine factors to be considered in the evaluation of a hazard information system:

1. Capability of the general public to recognize the existence of the immediate dangers presented by a material;

2. Presentation of information in a manner so that the general public will be able to accurately transmit basic information to emergency response personnel;

3. Compatibility, intermodally and internationally;

4. Capability of application to both bulk and non-bulk shipments;

5. Capability of functioning without use of a manual or other subsidiary documents;

6. Capability to meet the needs of emergency response personnel, carriers, shippers, and the general public;

7. Capability of integration with documentation, packaging, and vehicle identification requirements to help insure accuracy;

8. Capability of implementation without undue economic burden on shippers and carriers; and

9. Capability of indicating degree of hazard.

The request for public comments went on to describe nine different systems that either had been proposed to the Department or were known to be supported by one or more segments of the affected industry or emergency response community. An exception was the DOT hazardous materials information system which was previously subject of a rulemaking proposal under Docket HM-103. The MTB has considered all of these systems and the comments that were received in response to the request, and is now of the view that none are acceptable for adoption. The following is a summary of some of the reasons for this conclusion:

1. At least two of the systems would employ a preassigned before shipment numbering technique to provide specific action information or an indication of the level of hazard (Hazchem, NFPA 704). Although preassignment of numbers presumably would be made by MTB, commenters have not recommended any criteria except for flammability. Use of preassigned numbers would impose substantial delays on the introduction of new materials into commerce and the extensive effort and resources necessary for implementation would make such a system unworkable.

2. Several of the systems would employ numbers or words based primarily on the hazards or properties of a material (HI, RID/ADR, USCG, IATA, Union Carbide, Air Products, Pennwalt). The MTB believes that reliance on the identification of hazards alone is no longer a feasible approach, that specific identification of many materials is essential to the accomplishment of an improved emergency response program. Communication of hazards is important in the initial phases of an accident, and appropriate first contact handling information can be based on hazards; however, many accident situations dictate the need for more detailed information on how to deal with specifically identified materials. This is particularly so in accidents involving

combinations of hazardous materials as is frequently the case in major train derailments.

3. One system would call for shippers to furnish the carrier an emergency response form that would move with each rail car (Canadian Transport Commission). While the basic idea has merit, the MTB considers that (1) such a system would result in the production of emergency response information widely varying in content based on subjective judgments of different shippers, except where industry associations might prepare response information for common materials; (2) the enforceability of such a requirement without detailed Government guidelines would be questionable; and (3) while such a program may be workable for bulk shipments and full loads, the huge amount of paperwork involved would make its implementation impracticable for less-than-carload shipments.

4. One system would call for display of the order of severity in three risk categories—health, flammability, and reactivity (NFPA 704). The MTB and its predecessor have examined the utility of such a system on several occasions. However, no criteria have been suggested for the health and reactivity presentation; therefore, qualitative evaluations must be made in assigning levels of hazard (hence, the preassignment factor discussed in 1 above). In addition, this proposed system places too many hazard factors into three fields, thereby precluding appropriate assessment. Examples are the assignment of health hazard level three to chlorine, liquid oxygen, sodium hydroxide (lye), hydrogen sulfide, and tetraethyl-lead, and the assignment of reactivity level one to calcium oxide (quicklime), antimony pentachloride and chromic acid. The kind of hazard and the extent of the hazard posed by each of these materials is very different from that posed by the others that share the same assigned number. The appropriate action required to handle accidents invoving these materials also is quite different in each case. Consequently such a system is not appropriate for use in a transportation emergency response situation.

The MTB believes that determination of the degree of hazard beyond an examination of the properties of a material requires an assessment of the environment and circumstances at the scene of an accident. In most instances, a preliminary determination of risk can be made based on the information obtained at the scene of an accident. If the initial assessment reveals that a potentially serious situation exists; e.g., a large spill from a tank vehicle placarded POISON and bearing an identification number, then, beyond that basic initial response information provided in the proposed manual, a call should be made to the central response information center to obtain expert advice in fully assessing the level of risk based on the accident environment; i.e., topography, wind direction, proximity to habitations, configuration of the accident, etc., and the properties and quantity of the spilled material in relation thereto. It is not conceivable that all the factors that must be considered in determining risk can be transmitted directly from placards on transport vehicles. Therefore, the identification numbering system has been selected as the best means to assist in quicker and more accurate determinations of risk.

The MTB extends its appreciation to the many individuals, companies, and organizations for their considerable efforts in preparing and submitting comments in reply to the Request for Public Comment. A number of comments were accepted and previously adopted under Docket HM–112, and others not directly related to the proposals in this Notice will be considered in a future rulemaking action.

Of all the comments received in response to the Request, the MTB finds those presented by the Association of American Railroads (AAR) particularly supportive of the concepts on which the proposals in this Notice are based. For this reason, we restate a large portion of the AAR comments:

**The Basic Requirements of a Hazard Information System**

The communication of hazard information is a very difficult task. It must be capable of use by many different groups, each with a different need for information, and it must be usable in an emergency environment without requiring the use of potentially unavailable supplementary materials. The information which it transmits must be easily recognized, quickly understood and accurately communicated.

**Who Needs a Hazard Information System?**

The most general answer to this question is that anyone who may potentially come in contact with a transportation accident involving hazardous materials needs an information system in order to be able to make intelligent decisions about the safety of his own life and property and about the lives and property of others.

*The general public* is the broadest and most inclusive subcategory of people with a need. This group includes both those who are at the scene of an incident and know it and those who are in proximity and are not aware of it. As a rule of thumb, it is probable that no system of hazard information will protect those who are not able to immediately view the sight of the incident except as it alerts those who are in proximity and then pass along the message.

*Carrier and shipper personnel* are the next group of people with a need for a hazard information system. They may be considered to have certain minimal training in either necessary response countermeasures or in the ability to communicate the fact that an incident involving hazardous materials has taken place.

*Emergency response personnel,* generally, are taken to be the police and fire departments serving the area in which the hazardous incident takes place. Despite the wide variation in training and competence of such personnel, they are assumed, at a minimum, to be familiar with routine fire fighting and evacuation procedures and, at a more sophisticated level, may be able to apply advanced levels of countermeasure technology.

*Expert emergency response teams* consist of those with special training in dealing with hazardous commodities. They may be in the employ of shippers and manufacturers, carriers, and governmental agencies. They consist of that group with the highest possible degree of knowledge about the specific commodities involved in particular incidents.

**What Is Required of a Hazard Information System?**

Each of the four groups outlined above has different needs for a system of hazard information.

*The general public* should be made aware immediately that a hazard exists and should be able to communicate the very basic facts of that hazard to experts with a higher level of knowledge. These basic facts include the location of the incident, the type of vehicle involved, the occurrence of leakeage, fire or explosion and, if vehicle markings are seen, transmission of the fact of such markings or of the wording on them.

*Carrier and shipper personnel* should be able to communicate all of the information possessed by the general public and, in addition, they should be able to identify the nature of the hazard involved. By having access to the

shipping papers, the carrier and shipper personnel will be able to pass along detailed information concerning the commodities involved to their superiors and to the first emergency units to arrive at the scene. In some instances, carrier and shipper personnel information such as that provided by CHEMTREC.

*[Emergency] response personnel* require immediate information on the nature of the hazards of the materials involved and any special handling requirements. They should be able to use the information obtained from lower levels of response sophistication to access more detailed data to assist them in handling the specific product involved under the circumstances prevailing at the time of the accident.

*Expert emergency response teams* need to be able to use the information obtained at the scene and from lower level response groups to provide the most detailed and sophisticated direction for the handling of the incident. They should also be able to assist in proper cleanup and disposal activities following the immediate minimumization of threats to life and property.

**Summary**

Having analyzed the abilities and needs of those who will have contact with any hazard information system, its essentials are easily stated:

- It must be immediately recognizable as a system describing the existence of a hazard.
- It must be readily understandable by anyone who comes in contact with it.
- The information gained by anyone who comes in contact with it must be readily communicable to all others with a need to know.
- For those with a greater degree of ability, it must be indicative of a reponse pattern applicable to the particular incident.
- It must be uniform among all transportation modes.
- It must be capable of accommodating new hazardous commodities and, for higher levels of sophistication, it would be desirable that it be capable to easy computer implementation.

**The Components of the Hazard Information System Developed by the AAR**

In this section of the AAR's comments, the primary component parts of our hazard information system will be discussed and, wherever possible, related to the needs of various parties as recognized above.

**Shipping Papers**

The railroad industry believes that primary reliance must be placed on the shipping papers for information on the name of the product involved and its hazards. Historically, the shipping paper has been seen as the only single source of complete identifying information which travels with a shipment of hazardous materials. Because of all the important exemptions which appear in the regulations for the labeling and placarding of hazardous materials, the complete identification of particular shipments can be accomplished only through the shipping papers which accompany it. The recognition of deficiencies in the current use and content of shipping papers has led to the development of recommendations by the AAR for their correction.

Currently, shipping papers identify only the required classification, that is, the "primary hazard" of the material. This is no longer sufficient; the regulations must be amended to require the inclusion of all major hazards ["major hazards" are those recognized to the tertiary level] for dangerous commodities. This will mean that a shipment of, for instance, sulphuric acid must now be listed on [the] shipping paper as "SULPHURIC ACID, corrosive material, poisonous liquid, Class B."

To make the presence of hazardous materials obvious on the shipping paper, the proper shipping name and all hazards must be listed first and consecutively in each commodity's freight description. The order of materials (regulated or non-regulated) as listed on the shipping paper can be random if this previously described format is employed. The uniform presentation of information on shipping papers will enable transportation and emergency response personnel to readily identify hazardous materials from their descriptions and classifications.

In order to hasten the ability of on-scene personnel to contact those with expert technical information about the commodities involved, an emergency telephone number must be added to the shipping document. This telephone number must provide, on a 24-hour basis, immediate access to emergency assistance from the shipper, a designated industry response group, CHEMTREC, The Bureau of Explosives, or whatever source is deemed by the shipper to be best. It is of the utmost importance that both the immediate and long-term response to a hazardous materials incident be initiated as quickly as possible. In view of the potential for reducing injury, danger to property and adverse environmental consequences, the requirement for an emergency telephone number on shipping documents, to be placed there by the shipper, is a minimal burden.

The railroads of the United States have established a numerical Standard Transportation Commodity Code (STCC) for identifying hazardous materials. The use of STCC numbers is required by mutual railroad agreement and the number is exhibited on waybills covering all shipments. Recent efforts by the STCC Technical Committee of the AAR have resulted in the development of a new series of STCC numbers whose purpose is to specifically identify discrete hazardous materials. This "49-series" was made effective January 1, 1976 and is the vehicle for hazardous materials management which the transportation industry has long needed.

STCC numbers are 7-digit combinations assigned to specific commodities based on hazard characteristics. Within the 7-digit STCC number a means is provided to allow the quick identification of primary, secondary and, in some cases, tertiary hazards, whether or not hazards subordinate to the primary hazard are now recognized by DOT. The 49-series begins with the first two digits, 49, as an identifier for hazardous materials. The next three digits identify the potential hazards of the materials and the final two digits identify the specific commodity * * *.

It is important to note that many materials properly shipped under a general classification, *i.e.*, "flammable liquids, n.o.s.", have now been given specific 49-series STCC numbers based on the specific tariff description currently used. Their movement in transportation is well documented, and therefore, these commodities, as listed in STCC Tariff 1–D (or subsequent revisions), should henceforth be listed in § 172.5 as proper shipping names. The railroads request that the Hazardous Materials Regulations require the shipper to insert the STCC numbers on all shipping papers tendered with goods for transportation. Only [the] shipper knows enough about the materials he produces and ships to ensure the accurate assignment of STCC numbers.

The STCC Code is designed to be flexible and to allow for future expansion to include both new commodities and new combinations of [hazard] classification; a section is already reserved in the STCC Code to designate substances which are environmentally hazardous as defined

by the Environmental Protection Agency.

The precise logic which has been employed to create the 49-series has resulted in numbers whose utility far surpasses those proposed by other organizations including MCA and the United Nations. The middle three digits provide a complete set of numbers to reveal all major potential hazards of each product and this unique feature does not exist in any other system of which the AAR is aware * * *.

The AAR insists that no secondary, untried system of "hazard numbers" be implemented. The 49-series STCC Code is now in existence and in use and the next revision of the Bureau of [Explosives] publication "Emergency Handling of Hazardous Materials in Surface Transportation" will contain a complete listing of all commodities in the 49-series code and the appropriate hazard information for handling emergency situations involving these commodities. A cross reference index will be supplied to locate commodity information if only the 49-series STCC number is known; in addition, a growing number of rail carriers will be able to provide hard copy information about the commodities involved by entering the STCC numbers of commodities involved in incidents into their computers.

Out of an abundance of caution, it must be emphasized that the STCC Code does *not* make the railroads' system just another "numbers game" Hazard Information System. STCC numbers allow precise commodity identification and verification, allow computer accessing for commodity information, provide a means for the retention of hazardous materials movement statistics and assist in the computer generation of shipping documents. They are not intended for use by the general public and, thus, require no first-level-of-response decoding. Their primary purpose is fulfilled at the shipper/carrier interface and in the ability of the shipper or carrier to make precise commodity information known to emergency personnel * * *.

**Emergency Action Guide**

A unique feature of the AAR Hazard Information System is the Emergency Action Guide for Hazardous Materials Incidents * * *.

The purpose of the Emergency Action Guide is to indicate, primarily for carrier personnel, an initial response pattern to be taken to save lives and prevent injuries. Such an initial response will usually not extend beyond the first fifteen minutes or so following an accident and, with this in mind, the Guide identifies the basic nature of the hazard for each classification of material and describes the "ground rules" for initial emergency action. The Guide, while not suggested as a mandatory requirement, is proposed to be included as part of a trainman's timetable for relevant operations and could be displayed by poster in cabooses and locomotives. When reproduced on durable material, and perhaps folded, such a guide could also be carried in truck cabs, fire engines, and police vehicles. Recommended procedures for using the Guide would include instructions to those to whom it is issued to read it in advance of an emergency in order that, when an emergency occurred, the particular applicable section of the Guide could be easily found.

A basic purpose of the Emergency Action Guide is to fill the gap between the accident and the receipt of information from the party responding to the emergency telephone number and, even if the Guide was not part of the information carried on local community emergency vehicles, it could be available from the train crew, or from the truck driver, to assist the first emergency units on the scene.

The above is not a complete reproduction of the AAR's comments, nor is the copyrighted AAR Emergency Action Guide reproducible in this notice. Sample pages submitted by the AAR may be reviewed in the docket file. However, the quoted comments are representative of AAR's viewpoints concerning matters covered by this Notice. The MTB agrees that primary reliance must still be placed on shipping papers for information relative to "non-bulk" shipments, and that while the display of information on shipping papers has considerably improved following the adoption of regulations under Docket HM–112, further improvements are necessary. The MTB agrees that an identification number should be assigned to hazardous materials for rapid communication of information and employment in the emergency response system. The MTB agrees with the AAR that an emergency action guide or emergency response manual should be employed in the improved system. However, the MTB does not fully agree with the AAR's recommendations on how to accomplish improvements in these three areas.

**The Identification Numbers**

The MTB is proposing that the UN numbering system be used as the basis for implementation of an improved emergency response system. For a number of years, the United Nations Committee of Experts on the Transport of Dangerous Goods has been assigning identification numbers to specific chemicals and generic descriptions for "dangerous goods." This system is becoming more and more recognized on a worldwide basis. It is referenced in the Dangerous Good Code of the International Maritime Consultative Organization and is under consideration for adoption in the forthcoming standards to be implemented by the International Civil Aviation Organization. This system also is referenced in variouis procedural documents under development pertaining to international trade documentation. The MTB recently was advised by its Canadian Government counterpart, Transport Canada, that UN identification numbers will be used within Canada in connection with shipments of hazardous materials and that the numbers will be the basis for the Canadian emergency response system.

Several important factors were considered by the MTB in deciding to propose the use of the basic UN numbering system for improved emergency response information:

1. The numbers are assigned by Governmental authorities under the aegis of the Economic and Social Council of the United Nations and have the same meaning throughout worldwide commerce.

2. They have been assigned specifically to identify hazardous materials (dangerous goods) and are intended to have no other meaning or use. Thus, their formulation and application is not dictated by any other competing or overriding considerations.

3. They are assigned, for the most part, to materials requiring separate recognition that are shipped in commercial quantities. Therefore, only four digits are necessary. Other chemical identifier systems have as many as nine digits. The fewer the digits in an identification number, the greater its reliability in an emergency response system employing radio and telephone communications.

4. Numbers are assigned on the basis of the next open number without regard to the particular chemical properties of a material, thereby, avoiding any problems in the availability of numbers for future assignments. Availability of numbers almost inevitably would be a problem if the internal arrangement of digits was meant to have some special meaning; e.g., a chemical grouping or properties assignment. The use of

identification numbers will (1) serve to verify descriptions of chemicals; (2) provide for rapid identification of materials when it may be inappropriate or, even worse, confusing to require display of lengthy chemical names on vehicles; (3) assist in preparation of correct documentation when language translation is necessary; and (4) be an aid in speeding communication of information on materials from accident scenes and the return of more accurate emergency response information. For example, the UN number for acetone is 1090, while the number for acetone cyanohydrin in 1541—a distinction of great importance in conveying appropriate emergency response information.

It is proposed to list UN or U.S. identification numbers in a new column 3a of § 172.101. The number will be preceded by "UN" if the description preceding it is exactly the same or sufficiently similar to the international description (as displayed in the IMCO Code). If the description in § 172.101 is significantly different but addresses the same material as a UN entry, it will be given the same number but will be preceded by "NA" in the United States and Canada. A four-digit number beginning with "9" indicates there is no corresponding UN description (specific or generic) for the material assigned that number. This is the mechanism the MTB and Transport Canada propose to use to assign identification numbers to materials, such as hazardous substances, that have not as yet been assigned numbers by the United Nations Committee of Experts.

The AAR is to be complimented on its attempts to implement a hazardous materials identification numbering system. Its efforts in this regard have, in MTB's opinion, led the way towards providing an improved emergency response capability for hazardous materials. This Standard Transportation Commodity Code (STCC) system, in the absence of any established alternative, is being used in U.S. rail transport with increased frequency. Nevertheless, the MTB believes that what it is proposing in this Notice is preferable to the STCC system as a national, multimodal system for the following reasons:

1. While the 49 STCC series is not to be used for economic purposes, by necessity its formulation was constrained by the need for it to "bridge" into other STCC series numbers established for freight rating/statistical purposes. The following STCC listings illustrate this point:

| Specified name in STCC tariff 1-G | STCC number |
|---|---|
| Combustible liquid n.o.s. (asphalt tile plasticizer) | 49 154 08 |
| Combustible liquid n.o.s. (plasticizers, paint, lacquer or varnish) | 49 154 10 |
| Combustible liquid n.o.s. (belt dressing) | 49 154 16 |
| Combustible liquid n.o.s. (electric wire saturating or finish compound, paraffin base) | 49 154 18 |
| Combustible liquid n.o.s. (bay rum) | 49 154 20 |
| Combustible liquid n.o.s. (perfumery) | 49 154 22 |
| Combustible liquid n.o.s. (after shave lotions) | 49 154 24 |
| Combustible liquid n.o.s. (polishing wheel cement thinner) | 49 154 26 |

It is obvious that many STCC entries would serve no useful purpose for improved emergency response. There are a number of entries in Section 172.101 that are end-use terms, a practice which should not be expanded unless proven necessary.

2. If the descriptions in § 172.101 are greatly expanded, as suggested by the AAR, the undesirable result would be reduced accuracy and rapidity of access to information that is essential.

3. The STCC identification numbering system is published in a tariff which is on file with the Interstate Commerce Commission. Additions or deletions are made by, or under the supervision of, representatives of the railroad industry. Neither the transfer of all the listings for hazardous materials in the STCC Tariff nor incorporation of the tariff by reference is appropriate for publication in the Department's Hazardous Materials Regulations. If the AAR believes there are materials inappropriately described by generic descriptions in § 172.101, it should petition the MTB to describe each of them by technical name, thereby affording public participation in a rulemaking proceeding.

4. Recognition of the STCC system is limited to the United States and even within the United States its acceptance and use is further limited—primarily to the shipment of materials by railroad. It is not recognized on a worldwide basis, nor is it likely to be in light of the now-established UN numbering system and the growing applicaton of that system.

**Display of the Identification Number**

The MTB proposes to require the display of the identification number, as listed in proposed column 3a of § 172.101, on all shipping papers as the third element of a basic description (immediately following the hazard class entry) and on the outside of packagings of 110-gallons capacity or less (immediately following the prescribed shipping name of contents). It also proposes to require that the number be displayed on orange panels affixed to portable tanks, cargo tanks, and tank cars. While not a part of this proposal, the MTB will consider in the future the need to expand the required display of the orange panel to other than bulk shipments of materials.

The MTB believes that the display of the identification numbers must be as uniform as possible to enable ready recognition by emergency response personnel. Further, the MTB recognizes that, with display of the identification numbers on vehicles, it may not be necessary to expand the name marking requirements for tank cars and cargo tanks—an alternative of questionable benefit when camplex chemcial names are involved. The display of the numbers on the orange panel will lead to rapid identification of contents. If an identification number addresses a generic description, and such a description is considered inadequate for a particular material, the MTB believes the material should be described in § 172.101 by technical name with an identification number assigned to it following an appropriate rulemaking proceeding. The MTB recognizes that it may have to consider a number of additions and changes to the list of hazardous materials in the future. Concerning the marking of identification numbers on packages, two major factors were considered. First, freight personnel often became the first contact "emergency" personnel when spills and leaks occur. The MTB visualizes that they will be able to make use of the manual in the same manner as emergency response personnel. Sole dependence on complex chemical names without reference to an identification number may lead to an erroneous response. This same view applies to emergency response personnel coming into contact with packages directly in vehicles, on freight docks, or elsewhere. The second factor is the value of the identification number in verifying the shipping information displayed on documents with the information displayed on packages to preclude error.

**The Manual**

One of the principal comments the HMRB received in response to its proposals under Docket HM-103 was the view that the proposed system (HI) placed heavy reliance on a manual that the HMRB suggested would be placed in each of the 392,000 emergency vehicles (fire, police, etc.) in the Nation. At approximately the same time as the initial proposal under HM-103, the Office of Hazardous Materials initiated distribution of its "Emergency Services Guide for Selected Hazardous Materials" which provides guidance

during the initial phases of an emergency for 45 selected materials that are transported in bulk quantities. To date, more than 880,000 copies of the Guide have been distributed to fire, police, and other emergency services organizations without charge. This fact, plus information that good use has been made of the manual, reinforces the MTB's view that a manual should be a viable part of this improved emergency response effort. It will serve to provide immediate emergency response information, especially important during the first minutes when many judgements and decisions must be made.

The MTB has undertaken the development of a manual of approximately 100 pages that will address virtually all hazardous materials transported in commerce. The manual is being developed on the principle that its statements of information and recommended actions must be concise and clearly understood. In examining other manuals, it is evident that there are only a limited number of recommendations (instructions) that can be given in a manual even though the recommendation may address hundreds of materials. Rather than write a manual with separate instructions for each material—a method that would be unduly burdensome, expensive, and unnecessary—the MTB is planning the manual according to the following format. At the beginning of the manual there will be two lists of virtually all domestic and international shipping names for hazardous materials. The first list will be arranged in numerical order of identification numbers, and the second list in alphabetical order. In both lists, there will be a page reference number associated with each entry. The numbered pages, approximately 60 to 70, will contain initial emergency response information and instructions. Many materials calling for the same initial emergency response action will be covered by the same page of information and instructions. The information pages are being developed in a style similar to those contained in the "HI" manual proposed under Docket HM-103.

The MTB believes that, in many instances, the manual will be all that is needed at the scene of an incident to terminate a minor event or to keep a minor event from becoming a major event of great consequence. However, when a situation requires further assistance, the manual refers the user to CHEMTREC (Chemical Transportation Emergency Center) and other organizations to obtain more detailed information and the help of technical experts.

Other features of the manual under development include (1) display of certain chemical descriptions in red to indicate when evacuation may be necessary; (2) evacuation tables related to small and large spills of the materials listed in red; (3) a page devoted to the display of placards with an indication that the recommendation on a particular page should be followed relative to each placard if, for some reason, shipping papers are not available or the identification number is not displayed; and (4) a typical shipping paper highlighting the description of a hazardous material and its identification number.

### Exclusions

The proposals in this Notice do not apply to any material for which its proper shipping description does not have an associated identification number displayed in column 3a of § 172.101. Included in this category would be Consumer commodities, ORM-D and classes A and B explosives.

Consumer commodities properly classed ORM-D due to their quantity and form are not considered to pose a risk sufficient to warrant the application of these requirements. Classes A and B explosives, while under consideration for inclusion in the future, will have to be reviewed in greater detail to determine if a large number of identification numbers are necessary to make more finite distinctions in their risks or if a complete restructuring of the explosives descriptions would be appropriate. The MTB believes that, at the present time, it is desirable to use the "A" and "B" references for explosives presently displayed on shipping papers and placards for direct application in the manual and for communications.

### Other Actions

This rulemaking proposal is considered to be a matter of high priority to the MTB. Therefore, other proposals pertaining to the hazardous materials communications regulations will be dealt with in two separate rulemaking actions. Included in these actions will be proposals to (1) permit the use of certain international descriptions (IMCO and forthcoming ICAO descriptions emanating primarily from the UN recommendations); (2) require further description for certain n.o.s. entries; (3) prescribe additional labeling requirements and permit use of certain newly adopted international labels; (4) require a special marking on portable tanks, cargo tanks and tank cars containing unodorized LP gas; and (5) address a number of petitions pertaining to shipping papers, certifications and placarding.

### Implementation: Priorities and Costs

The MTB views the timing of the implementation of requirements proposed in this Notice as the major feature of its cost. This view is based on factors such as the present inventories of preprinted shipping documents, premarked (name of contents) inventories of packagings, and the necessary training and education associated with the implementation of the procedures necessary to comply with the regulations proposed herein if they are adopted. Therefore, the MTB believes it should make a statement concerning its contemplated implementation of the regulations proposed in this Notice.

The highest priority will be placed on implementation of documentation and identification (the orange panel) requirements applicable to transportation of hazardous materials in portable tanks, cargo tanks and tank cars. The MTB believes the mandatory compliance date should be no more than one year after the date of publication of the final rule.

The second highest priority will be placed on implementation of the documentation requirements for hazardous materials in packaging (other than bulk) excluding those, such as Consumer commodities, ORM-D, that will not be assigned identification numbers. The MTB believes the mandatory compliance date should be no longer than one year after the date of publication of the final rule.

The lowest priority will be assigned to packaging (less than 110-gallon capacity) markings. The MTB believes that two years should be provided for implementation or, as an alternative, a "grandfather clause" should be provided for packagings in stock prior to the effective date of the new regulations.

Concerning the display of identification numbers on orange panels, the MTB has obtained preliminary cost figures from a major supplier of labels and placards and has determined that, depending on the quantities ordered, the costs of prenumbered panels would be approximately as follows: Panels made of tag board for one time use—10 to 25 cents per panel; panels made of extruded vinyl for short term use—20 to 45 cents per panel; panels made of cast vinyl with plastic coating having an estimated life of five years—38 to 55 cents per panel. The vinyl panels would be adhesive backed to facilitate attachment.

The MTB expects the greatest costs will be incurred in the display of the orange panels on cargo tanks operated by common/contract carriers because of the high frequency in the change of usage of cargo tanks in this particular segment of the transportation industry. This fact is recognized in the existing regulations relative to the marking of the name of contents of cargo tanks. However, the MTB believes the added cost associated with implementation of these proposed requirements is warranted in the interest of providing an improved emergency response capability and is preferable to the alternative of extending the present tanks, as is presently required for portable tanks.

Specific views are invited concerning the proposed implementation of the regulations proposed in this Notice. Commenters should provide factual information concerning inventories of preprinted documents, adjustments in ADP programs, packaging turnover, and training. Broad generalized statements will not beneneficial to the MTB in its efforts to make a serious determination of how the rules are to be implemented, if they are adopted.

In further regard to implementation, the MTB was asked recently if any of the present regulations would preclude application of orange panels such as are proposed in this rulemaking. The MTB's response indicated there is no existing regulation that would prohibit the display of the United Nations identification number after the class entry on a shipping document, nor the display of an orange panel bearing an identification number.

The MTB originally considered that a rulemaking action of this type should be the subject of an advance notice of proposed rulemaking in order to solicit public comments relative to its development. On further consideration, the MTB has decided that a notice of proposed rulemaking is appropriate in order to expedite implementation since the proposals contained herein are confined to one basic issue; i.e., the display of an identification number, with other matters pertaining to improved communications being made the subject of separate rulemaking actions.

**Conclusion**

The MTB believes (1) adoption of the hazardous materials identification system proposed in this Notice will be a vital initial step in improving emergency response capabilities; (2) that, while the system can function without reliance on a manual, a manual of the type it has under development will significantly enhance emergency response capabilities, particularly during the first minutes of an emergency; (3) the proposed system is compatible intermodally and internationally and will be applicable to bulk and non-bulk shipment to an extent considered necessary; and (4) the proposed system is capable of integration with existing documentation, packaging and vehicle identification requirements that will insure the accuracy of information transmitted to and from emergency response personnel.

In consideration of the foregoing, it is proposed to amend Part 172 of Title 49, Code of Federal Regulations as follows:

1. In § 172.100 paragraph (d) would be amended by adding the following to the end of the paragraph.

**§ 172.100 Purpose and use of the table.**

* * * * *

(d) * * * Column 3(a) lists the identification numbers assigned to hazardous materials. Those preceded by a "UN" are associated with descriptions considered appropriate for international shipments as well as domestic shipments. Those preceded by an "NA" are associated with descriptions that are not recognized for international shipments, except to and from Canada. If an identification number is the "9000" series, it is either associated with the description of a material that is not appropriately covered by international hazardous materials (dangerous goods) shipping standards or not appropriately addressed by such standards for emergency response information purposes.

* * * * *

2. Section 172.101, the Hazardous Materials Table, would be revised by the addition of column 3(a) to read as follows:

BILLING CODE 4910-60-M

## §172.101 Hazardous Materials Table

1

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | Accumulator, pressurized (*pneumatic or hydraulic*), containing nonflammable gas | Nonflammable gas | NA1956 | Nonflammable gas | 173.306 | | No limit | No limit | 1,2 | 1,2 | |
| | Acetal | Flammable liquid | UN1088 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | |
| EA | Acetaldehyde ammonia (*RQ-1000/454*) | ORM-A | UN1841 | None | 173.505 | 173.510 | No limit | No limit | | | |
| E | Acetaldehyde (*ethyl aldehyde*) (*RQ-1000/454*) | Flammable liquid | UN1089 | Flammable liquid | None | 173.119 | Forbidden | 10 gallons | 1,3 | 5 | |
| *E | Acetic acid (*aqueous solution*) (*RQ-1000/454*) | Corrosive material | UN2790 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | Stow separate from nitric acid or oxidizing materials |
| E | Acetic acid, glacial (*RQ-1000/454*) | Corrosive material | UN2789 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | Stow separate from nitric acid or oxidizing materials. Segregation same as for flammable liquids |
| E | Acetic anhydride (*RQ-1000/454*) | Corrosive material | UN1715 | Corrosive | 173.244 | 173.245 | 1 quart | 1 gallon | 1,2 | 1,2 | |
| | Acetone | Flammable liquid | UN1090 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | |
| E | Acetone cyanohydrin (*RQ-10/4.54*) | Poison B | UN1541 | Poison | None | 173.346 | Forbidden | 55 gallons | 1 | 5 | Shade from radiant heat. Stow away from corrosive materials |
| | Acetone oil | Flammable liquid | UN1091 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Acetonitrile | Flammable liquid | UN1648 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1 | 4 | Shade from radiant heat |
| | Acetyl benzoyl peroxide, solid | Forbidden | | | | | | | | | |
| | Acetyl benzoyl peroxide solution, *not over 40% peroxide* | Organic peroxide | NA2081 | Organic peroxide | None | 173.222 | Forbidden | 1 quart | 1,2 | 1 | |
| E | Acetyl bromide (*RQ-5000/2270*) | Corrosive material | UN1716 | Corrosive | 173.244 | 173.247 | 1 quart | 1 gallon | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| E | Acetyl chloride (*RQ-5000/2270*) | Flammable liquid | UN1717 | Flammable liquid | 173.244 | 173.247 | 1 quart | 1 gallon | 1 | 1 | Stow away from alcohols. Keep cool and dry. Separate longitudinally by an intervening complete compartment or hold from explosives |
| | Acetyl iodide | Corrosive material | UN1898 | Corrosive | 173.244 | 173.247 | 1 quart | 1 gallon | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| | Acetyl peroxide solution, *not over 25% peroxide* | Organic peroxide | UN2084 | Organic peroxide | 173.153 | 173.222 | Forbidden | 1 quart | 1,2 | 1 | |
| | Acetylene | Flammable gas | UN1001 | Flammable gas | None | 173.303 | Forbidden | 300 pounds | 1 | 1 | Shade from radiant heat |
| A | Acetylene tetrabromide | ORM-A | UN2504 | None | 173.505 | 173.510 | 10 gallons | 55 gallons | | | |
| | Acid butyl phosphate | Corrosive material | UN1718 | Corrosive | 173.244 | 173.245 | 1 quart | 5 gallons | 1,2 | 1,2 | Glass carboys in hampers not permitted under deck |
| | Acid carboy empty. *See* Carboy empty. | | | | | | | | | | |
| * | Acid, liquid, n.o.s. | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 | 1 quart | 5 pints | 1 | 4 | Keep cool |
| * | Acid, sludge | Corrosive material | UN1906 | Corrosive | None | 173.248 | Forbidden | 1 quart | 1,2 | 1 | |
| E | Acrolein, inhibited (*RQ-1/.454*) | Flammable liquid | UN1092 | Flammable liquid and Poison | None | 173.122 | Forbidden | 1 quart | 1,2 | 5 | Keep cool. Stow away from living quarters |
| | Acrylic acid | Corrosive material | UN2218 | Corrosive | 173.244 | 173.245 | 1 quart | 5 pints | 1 | 1 | |
| E | Acrylonitrile (*RQ-100/45.4*) | Flammable liquid | UN1093 | Flammable liquid and Poison | None | 173.119 | Forbidden | 1 quart | 1,2 | 5 | Keep cool |
| | Actuating cartridge, explosive(*fire extinguisher, or valve*) | Class C explosive | NA0276 | Explosive C | 173.114 | | 50 pounds | 150 pounds | 1,2 | 1,2 | Keep cool and dry |
| * | Adhesive, n.o.s. *See* Cement, liquid, n.o.s. | | UN1133 | | | | | | | | |
| E | Adipic acid (*RQ-5000/2270*) | ORM-E | NA9077 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | *Aerosol product, each aerosol container exceeding 50 cubic inches capacity.* See Compressed gas, n.o.s. | | UN1956 | | | | | | | | |
| * | Air, compressed | Nonflammable gas | UN1002 | Nonflammable gas | 173.306 | 173.302 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| | Aircraft rocket engine (*Commercial*) | Flammable solid | NA2791 | Flammable solid | None | 173.238 | Forbidden | 550 pounds | 1,3 | 5 | |
| | Aircraft rocket engine igniter (*Commercial*) | Flammable solid | UN2792 | Flammable solid | None | 173.238 | Forbidden | 25 pounds | 1,3 | 5 | |
| | *Airplane flare, See* Fireworks, special | | | | | | | | | | |
| * | Alcohol, n.o.s. | Flammable liquid | UN1987 | Flammable liquid | 173.118 | 173.125 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Alcohol, n.o.s. | Combustible liquid | NA1987 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| EA | Aldrin, cast solid (*RQ-1/.454*) | ORM-A | NA2761 | None | 173.505 | 173.510 | No limit | No limit | | | |
| EA | Aldrin mixture, dry, with 65% or less aldrin (*RQ-1/.454*) | ORM-A | NA2761 | None | 173.505 | 173.510 | No limit | No limit | | | |
| E | Aldrin mixture, dry (*with more than 65% aldrin*) (*RQ-1/.454*) | Poison B | NA2761 | Poison | 173.364 | 173.376 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| E | Aldrin mixture, liquid (*with more than 60% aldrin*) (*RQ-1/.454*) | Poison B | NA2762 | Poison | 173.345 | 173.361 | 1 quart | 55 gallons | 1,2 | 1,2 | If flash point less than 141 deg F, segregation same as for flammable liquids |
| EA | Aldrin mixture, liquid, with 60% or less aldrin (*RQ-1/.454*) | ORM-A | NA2762 | None | 173.505 | 173.510 | No limit | No limit | | | |
| E | Aldrin (*RQ-1/.454*) | Poison B | NA2761 | Poison | 173.364 | 173.376 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Alkaline corrosive battery fluid | Corrosive material | NA2797 | Corrosive | 173.244 | 173.249 173.257 | 1 quart | 5 gallons | 1,2 | 1,2 | |
| | Alkaline corrosive battery fluid with empty storage battery | Corrosive material | NA2797 | Corrosive | None | 173.258 | Forbidden | 5 pints | 1,2 | 1,2 | |
| * | Alkaline corrosive liquid, n.o.s. | Corrosive material | NA1760 | Corrosive | 173.244 | 173.249 | 1 quart | 5 gallons | 1,2 | 1,2 | |
| * | Alkaline liquid, n.o.s. | Corrosive material | NA1760 | Corrosive | 173.244 | 173.249 | 1 quart | 5 gallons | 1,2 | 1,2 | |
| * | Alkanesulfonic acid | Corrosive material | NA2584 | Corrosive | 173.244 | 173.245 | 5 pints | 1 gallon | 1,2 | 1 | |
| | *Alkyl aluminum halides. See* Pyrophoric liquid, n.o.s. | | NA2221 | | | | | | | | |
| A | Allethrin | ORM-A | | None | 173.505 | 173.510 | No limit | No limit | | | |

2

## §172.101 Hazardous Materials Table (cont'd)

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| E | Allyl alcohol (*RQ-100/45.5*) | Flammable liquid | UN1098 | Flammable liquid and Poison | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Allyl bromide | Flammable liquid | UN1099 | Flammable liquid | 173.118 | 173.119 | Forbidden | 10 gallons | 1,2 | 1 | |
| E | Allyl chloride (*RQ-1000/454*) | Flammable liquid | UN1100 | Flammable liquid | None | 173.119 | Forbidden | 10 gallons | 1,3 | 5 | |
| | Allyl chlorocarbonate | Flammable liquid | UN1722 | Flammable liquid | None | 173.288 | Forbidden | 5 pints | 1 | 5 | Keep dry. Separate longitudinally by an intervening complete hold or compartment from explosives. Segregation same as for corrosive materials |
| | Allyl chloroformate. *See* Allyl chlorocarbonate | | UN1722 | | | | | | | | |
| | Allyl trichlorosilane | Corrosive material | UN1724 | Corrosive | None | 173.280 | Forbidden | 10 gallons | 1 | 1 | Keep dry |
| | Aluminum alkyls. *See* Pyrophoric liquid, n.o.s. | | NA2221 | | | | | | | | |
| | Aluminum bromide, anhydrous | Corrosive material | UN1725 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry |
| | Aluminum dross, wet *or* hot. *See* Sec. 173.173 | | | | | | | | | | |
| | Aluminum hydride | Flammable solid | UN2463 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 25 pounds | 1,2 | 5 | Segregation same as for flammable solid labeled Dangerous When Wet |
| * | Aluminum, liquid *or* paint. *See* Paint, enamel, lacquer stain, shellac, varnish, etc. | | NA1263 | | | | | | | | |
| * | Aluminum, metallic, powder | Flammable solid | UN1396 | Flammable solid | 173.232 | 173.232 | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry. Segregation same as for flammable solids labeled dangerous when wet |
| | Aluminum nitrate | Oxidizer | UN1438 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| * | Aluminum phosphate solution | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Aluminum phosphide | Flammable solid | UN1397 | Flammable solid and Dangerous when wet | None | 173.154 | Forbidden | 25 pounds | 1,2 | 1,2 | Stow away from acids and oxidizing materials |
| EA | Aluminum sulfate (*RQ-5000/2270*) | ORM-B | UN1759 | None | None | 173.510 | 25 pounds | 100 pounds | 23 | 2 | |
| | *Amatol.* *See* High explosive | | | | | | | | | | |
| | 2-(2-Aminoethoxy) ethanol | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | N-Aminoethylpiperazine | Corrosive material | UN2815 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | bis (Aminopropyl) piperazine | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Aminopropyldiethanolamine | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | N-Aminopropylmorpholine | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| E | Ammonia, anhydrous (*RQ-100/45.4*) | Nonflammable gas | UN1005 | Nonflammable gas | 173.306 | 173.304 173.314 173.315 | Forbidden | 300 pounds | 1,2 | 4 | Stow in well ventilated space |
| E | Ammonia solution (*containing more than 44% ammonia*) (*RQ-1000/454*) | Nonflammable gas | UN2073 | Nonflammable gas | 173.306 | 173.304 173.314 173.315 | Forbidden | 300 pounds | 1,2 | 4 | Stow in well ventilated space |
| | *Ammonia solution (containing 44% or less ammonia in water).* *See* Ammonium hydroxide | | UN2672 | | | | | | | | |
| E | Ammonium acetate (*RQ-5000/2270*) | ORM-E | NA9079 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Ammonium arsenate, solid | Poison B | UN1546 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | Stow away from alkaline corrosives |
| E | Ammonium benzoate (*RQ-5000/2270*) | ORM-E | NA9080 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Ammonium bicarbonate (*RQ-5000/2270*) | ORM-E | NA9081 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Ammonium bifluoride. *See* Ammonium hydrogen fluoride | | UN1727 | | | | | | | | |
| EA | Ammonium bisulfite, solid (*RQ-5000/2270*) | ORM-B | NA2693 | None | None | 173.510 | 25 pounds | 100 pounds | 2 | 2 | |
| E | Ammonium bisulfite solution (*RQ-5000/2270*) | Corrosive material | UN2693 | Corrosive | 173.244 | 173.245 | 1 quart | 5 gallons | 2 | 2 | |
| EA | Ammonium carbamate (*RQ-5000/2270*) | ORM-A | NA9083 | None | None | 173.510 | 50 pounds | No limit | 2 | 2 | Keep away from heat. |
| EA | Ammonium carbonate (*RQ-5000/2270*) | ORM-A | NA9084 | None | None | 173.510 | 50 pounds | No limit | 2 | 2 | Keep away from heat, acids, alum and salts of iron or zinc. |
| | Ammonium chlorate | Forbidden | | | | | | | | | |
| EA | Ammonium chloride (*RQ-5000/2270*) | ORM-E | NA9085 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Ammonium chromate (*RQ-1000/454*) | ORM-E | NA9086 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Ammonium citrate (*RQ-5000/2270*) | ORM-E | NA9087 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Ammonium dichromate (*ammonium bichromate*) (*RQ-1000/454*) | Oxidizer | UN1439 | Oxidizer | 173.153 | 173.154 173.235 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| EA | Ammonium fluoborate (*RQ-5000/2270*) | ORM-B | NA9088 | None | None | 173.510 | 25 pounds | 100 pounds | 2 | 2 | |
| EA | Ammonium fluoride (*RQ-5000/2270*) | ORM-B | UN2505 | None | 173.505 | 173.510 173.800 | 25 pounds | 100 pounds | | | |
| E | Ammonium hydrogen fluoride, solid (*RQ-5000/2270*) | Corrosive material | UN1727 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 2 | 2 | |
| *E | Ammonium hydrogen fluoride solution (*RQ-5000/2270*) | Corrosive material | UN2817 | Corrosive | 173.244 | 173.245 | 1 quart | 5 gallons | 1,2 | 1,2 | Keep dry |
| A | Ammonium hydrogen sulfate | ORM-B | UN2506 | None | 173.505 | 173.510 173.800 | 25 pounds | 100 pounds | | | |
| A | Ammonium hydrosulfide solution | ORM-A | NA2683 | None | 173.505 | 173.510 173.605 | 10 gallons | 55 gallons | | | |
| *E | Ammonium hydroxide (*containing not more than 44% ammonia*) (*RQ-1000/454*) | Corrosive material | NA2672 | Corrosive | 173.244 | 173.245 | 2 gallons | 2 gallons | 4 | 4 | |
| | Ammonium nitrate-carbonate mixture | Oxidizer | UN2068 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| | Ammonium nitrate fertilizer, *containing no more than 0.2% carbon* | Oxidizer | UN2067 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| | *Ammonium nitrate-Fuel mixtures.* *See* Blasting agent | | | | | | | | | | |

## §172.101 Hazardous Materials Table (cont'd)

3

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | *Ammonium nitrate-Fuel mixtures. See* High explosive | | | | | | | | | | |
| * | Ammonium nitrate mixed fertilizer | Oxidizer | UN2069 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| | Ammonium nitrate (no organic coating) | Oxidizer | NA1942 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| | Ammonium nitrate (organic coating) | Oxidizer | NA1942 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| * | Ammonium nitrate-phosphate | Oxidizer | UN2070 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| E | Ammonium oxalate (*RQ-5000/2270*) | ORM-A | NA2449 | None | None | 173.510 | 25 pounds | 100 pounds | 2 | 2 | |
| * | Ammonium perchlorate | Oxidizer | UN1442 | Oxidizer | 173.153 | 173.154 173.239a | 25 pounds | 100 pounds | 1,2 | 4 | Stow away from powdered metals |
| * | Ammonium perchlorate. *See* High explosives | | | | | | | | | | |
| | Ammonium permanganate | Oxidizer | NA1482 | Oxidizer | None | 173.154 | Forbidden | Forbidden | 1,2 | 1,2 | Separate from ammonium compounds and hydrogen peroxide. This material may be forbidden in water transportation by certain countries |
| | *Ammonium picrate. See* High explosive | | | | | | | | | | |
| | Ammonium picrate, wet (*with 10% or more water*) | Flammable solid | UN1310 | Flammable solid | 173.192 | | 1 pound | 1 pound | 1 | 4 | Stow away from heavy metals and their compounds |
| A | Ammonium polysulfide solution | ORM-A | UN2818 | None | 173.505 | 173.510 173.605 | 10 gallons | 55 gallons | | | |
| EA | Ammonium silicofluoride (*RQ-1000/454*) | ORM-B | UN2854 | None | None | 173.510 | 25 pounds | 100 pounds | 2 | 2 | |
| E | Ammonium sulfamate (*RQ-5000/2270*) | ORM-E | NA9089 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| W | Ammonium sulfate nitrate | ORM-C | NA1477 | None | 173.505 | 172.910 | | | 1,2 | 1,2 | Must not be accepted for transportation while hot. Separate by an intervening hold or compartment from Class A explosives. Separate from other explosives, corrosive materials, flammable solids, liquids, or gases, oxidizing materials, organic peroxides, or organic materials |
| *E | Ammonium sulfide solution (*RQ-5000/2270*) | Flammable liquid | UN2683 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| E | Ammonium sulfite (*RQ-5000/2270*) | ORM-E | NA9090 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Ammonium tartrate (*RQ-5000/2270*) | ORM-E | NA9091 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Ammonium thiocyanate (*RQ-5000/2270*) | ORM-E | NA9092 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Ammonium thiosulfate (*RQ-5000/2270*) | ORM-E | NA9093 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | *Ammunition, chemical (containing a Poison A liquid or gas). See Chemical ammunition (containing a Poison A material)* | | | | | | | | | | |
| | *Ammunition, chemical (contatning a Poison B material). See Chemical ammunition (containing a Poison B material)* | | | | | | | | | | |
| | *Ammunition, chemical (containing an irritating liquid or solid). See Chemical ammunition (containing an irritating material)* | | | | | | | | | | |
| | Ammunition, chemical, explosive, with Poison A material | Class A explosive | | Explosive A and Poison gas | None | 173.59 | Forbidden | Forbidden | 6 | 5 | No other cargo may be stowed in the same hold with these items |
| | Ammunition, chemical, explosive, with Poison B material | Class A explosive | | Explosive A and Poison | None | 173.59 | Forbidden | Forbidden | 6 | 5 | No other cargo may be stowed in the same hold with these items |
| | Ammunition, chemical, explosive, with irritant | Class A explosive | | Explosive A and Irritant | None | 173.59 | Forbidden | Forbidden | 6 | 5 | No other cargo may be stowed in the same hold with these items |
| | Ammunition for cannon with empty projectile | Class B explosive | | Explosive B | None | 173.89 | Forbidden | Forbidden | 1,2 | 5 | |
| | Ammunition for cannon with explosive projectile | Class A explosive | | Explosive A | None | 173.54 | Forbidden | Forbidden | 6 | 5 | |
| | Ammunition for cannon with gas projectile | Class A explosive | | Explosive A | None | 173.54 | Forbidden | Forbidden | 6 | 5 | |
| | Ammunition for cannon with illuminating projectile | Class A explosive | | Explosive A | None | 173.54 | Forbidden | Forbidden | 6 | 5 | |
| | Ammunition for cannon with incendiary projectile | Class A explosive | | Explosive A | None | 173.54 | Forbidden | Forbidden | 6 | 5 | |
| | Ammunition for cannon with inert loaded projectile | Class B explosive | | Explosive B | None | 173.89 | Forbidden | Forbidden | 1,2 | 5 | |
| | Ammunition for cannon with smoke projectile | Class A explosive | | Explosive A | None | 173.54 | Forbidden | Forbidden | 6 | 5 | |
| | Ammunition for cannon with solid projectile | Class B explosive | | Explosive B | None | 173.89 | Forbidden | Forbidden | 1,2 | 5 | |
| | Ammunition for cannon with tear gas projectile | Class A Explosive | | Explosive A | None | 173.54 | Forbidden | Forbidden | 6 | 5 | |
| | Ammunition for cannon with tear gas projectile | Class B Explosive | | Explosive B | None | 173.89 | Forbidden | Forbidden | 1,2 | 5 | |
| | Ammunition for cannon without projectile | Class B explosive | | Explosive B | None | 173.89 | Forbidden | Forbidden | 1,2 | 65 | |
| | Ammunition for small-arms with explosive projectile | Class A explosive | | Explosive A | None | 173.58 | Forbidden | Forbidden | 6 | 5 | |
| | Ammunition for small-arms with incendiary projectile | Class A explosive | | Explosive A | None | 173.58 | Forbidden | Forbidden | 6 | 5 | |
| | *Ammunition, non-explosive* | | | | 173.55 | | | | | | |
| | *Ammunition, rocket. See* Rocket ammunition | | | | | | | | | | |
| | Ammunition, small-arms. *See* Small-arms ammunition | | | | | | | | | | |
| E | Amyl acetate (*RQ-1000/454*) | Flammable liquid | UN1104 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Amyl acid phosphate | Corrosive material | UN2819 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Amyl chloride | Flammable liquid | UN1107 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Amyl formate | Flammable liquid | UN1109 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Amyl mercaptan | Flammable liquid | UN1111 | Flammable liquid | None | 173.141 | Forbidden | 10 gallons | 1,2 | 1 | |
| | Amyl nitrite | Flammable liquid | UN1113 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10gallons | 1,3 | 4 | |

4 **§172.101 Hazardous Materials Table (cont'd)**

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | Amyl trichorosilane | Corrosive material | UN1728 | Corrosive | None | 173.280 | Forbidden | 10 gallons | 1 | 5 | Keep dry |
| | Amylamine | Flammable liquid | UN1106 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Amylene, *normal* | Flammable liquid | UN1108 | Flammable liquid | 173.118 | 173.119 | 1quart | 10 gallons | 1,3 | 1,3 | |
| | Anhydrous ammonia. *See* Ammonia, anhydrous | | UN1005 | | | | | | | | |
| | Anhydrous hydrazine. *See* Hydrazine, anhydrous | | UN2029 | | | | | | | | |
| | Anhydrous hydrofluoric acid. *See* Hydrogen fluoride | | UN1052 | | | | | | | | |
| | Aniline oil drum, empty *See* 173.347(d) | Poison B | | | | | | | 1,2 | 1 | Do not accept unless returnable package notice is on drum and the instructions thereon have been carried out |
| E | Aniline oil, liquid (*RQ-1000/454*) | Poison B | UN1547 | Poison | None | 173.347 | Forbidden | 55 gallons | 1,2 | 1,2 | Stow away from oxidizing materials and acids |
| | Anisoyl chloride | Corrosive material | UN1729 | Corrosive | 173.244 | 173.279 | 1 quart | 1 quart | 1 | 1 | Keep dry |
| * | Antifreeze compound, liquid | Flammable liquid | NA1142 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Antifreeze compound, liquid | Combustible liquid | NA1142 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Antifreeze preparation, liquid | Flammable liquid | NA1142 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Antifreeze preparation, liquid | Combustible liquid | NA1142 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Antimonous chloride. *See* Antimony trichloride | | UN1733 | | | | | | | | |
| A | Antimony lactate, solid | ORM-A | UN1550 | None | 173.606 | 173.510 | No limit | No limit | | | |
| E | Antimony pentachloride (*RQ-1000/454*) | Corrosive material | UN1730 | Corrosive | None | 173.247 | 1 quart | 1 quart | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| *E | Antimony pentachloride solution (*RQ-1000/454*) | Corrosive material | UN1731 | Corrosive | 173.244 | 173.245 | 1 quart | 5 pints | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| | Antimony pentafluoride | Corrosive material | UN1732 | Corrosive | None | 173.246 | Forbidden | 25 pounds | 1 | 5 | Keep dry |
| EA | Antimony potassium tartrate solid (*RQ-1000/454*) | ORM-A | UN1551 | None | 173.505 | 173.510 | No limit | No limit | | | |
| A | Antimony sulfide, solid | ORM-A | NA1325 | None | 173.505 | 173.510 | No limit | No limit | | | |
| E | Antimony tribromide, solid (*RQ-1000/454*) | Corrosive material | NA1549 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry |
| E | Antimony tribromide, solution (*RQ-1000/454*) | Corrosive material | NA1549 | Corrosive | 173.244 | 173.245 | 1 quart | 5 pints | 2 | 2 | Keep dry |
| E | Antimony trichloride, solid (*RQ-1000/454*) | Corrosive material | UN1733 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry |
| *E | Antimony trichloride solution (*RQ-1000/454*) | Corrosive material | NA1733 | Corrosive | 173.244 | 173.245 | 1 quart | 5 pints | 1 | 1 | Keep dry |
| E | Antimony trifluoride, solid (*RQ-1000/454*) | Corrosive material | UN1549 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry |
| E | Antimony trifluoride, solution (*RQ-1000/454*) | Corrosive material | UN1549 | Corrosive | 173.244 | 173.245 | 1 quart | 5 pints | 2 | 2 | Keep dry |
| E | Antimony trioxide (*RQ-5000/2270*) | ORM-E | UN1549 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| * | Aqua ammonia solution *(containing 44% or less ammonia). See* Ammonium hydroxide | | NA2672 | | | | | | | | |
| * | Argon | Nonflammable gas | UN1006 | Nonflammable gas | 173.306 | 173.302 173.314 | 150 pounds | 300 pounds | 1,2 | 1,3 | |
| * | Argon, liquid pressurized | Nonflammable gas | UN1951 | Nonflammable gas | None | 173.304 | Forbidden | 300 pounds | 1,3 | 1,3 | |
| | Arsenic acid, solid | Poison B | UN1553 | Poison | 173.364 | 173.366 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| * | Arsenic acid solution | Poison B | UN1554 | Poison | 173.345 | 173.348 | 1 quart | 55 gallons | 1,2 | 1,2 | |
| | Arsenic bromide, solid | Poison B | UN1555 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Arsenic chloride *(arsenious)* liquid. *See* arsenic trichloride | | UN1560 | | | | | | | | |
| E | Arsenic disulfide. *See* Arsenic sulfide, solid | | NA1557 | | | | | | | | |
| | Arsenic iodide, solid | Poison B | NA1557 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| E | Arsenic pentoxide, solid (*RQ-5000/2270*) | Poison B | UN1559 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Arsenic, solid | Poison B | UN1554 | Poison | 173.364 | 173.366 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Arsenic sulfide, solid | Poison B | NA1557 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | Keep dry |
| E | Arsenic trichloride, liquid (*RQ-5000/454*) | Poison B | UN1560 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1,2 | |
| E | Arsenic trioxide, solid (*RQ-5000/454*) | Poison B and ORM-E | UN1561 | Poison | 173.364 | 173.366 173.368 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| E | Arsenic trisulfide (*RQ-5000/2270*) | Poison B | NA1557 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 2 | 2 | |
| | Arsenic, white, solid. *See* Arsenic trioxide, solid | | UN1561 | | | | | | | | |
| * | Arsenical compound n.o.s., liquid, *or* arsenical mixture, n.o.s., liquid | Poison B | UN1556 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1,2 | |
| * | Arsenical compound n.o.s., solid, *or* arsenical mixture, n.o.s., solid | Poison B | UN1557 | Poison | 173.364 | 173.367 | 50 pounds | 200 pounds | 1,2 | 1,2 | Keep dry |
| | Arsenical dip, liquid *(sheep dip)* | Poison B | UN1557 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1,2 | |
| | Arsenical dust | Poison B | UN1562 | Poison | 173.364 | 173.368 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Arsenical flue dust | Poison B | UN1562 | Poison | 173.364 | 173.368 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Arsenious acid, solid. *See* Arsenic trioxide, solid | | UN1560 | | | | | | | | |
| * | Arsenious and mercuric iodide solution | Poison B | NA2810 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1,2 | |
| | Arsine | Poison A | UN2188 | Poison gas and Flammable gas | None | 173.328 | Forbidden | Forbidden | 1 | 5 | |
| * | Asbestos | ORM-C | NA2590 | None | 173.1090(c) | 173.1090(c) | No limit | No limit | 1,2 | 1,2 | Stow and handle to avoid airborne particles. |
| W | Asphalt, *at or above its flashpoint* | ORM-C | NA1368 | None | None | None | Forbidden | Forbidden | 1 | 5 | When applicable, no fire or residue thereof may be present in the furnace heating the substance while the vehicle is on board a cargo vehicle |
| * | Asphalt, cut back | Flammable liquid | NA1993 | Flammable liquid | 173.118 | 173.131 | 1 quart | 10 gallons | 1,2 | 1 | |

## §172.101 Hazardous Materials Table (cont'd)

5

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| * | Asphalt, cut back | Combustible liquid | NA1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | *Automobile, motorcycle, tractor, or other self-propelled vehicle. See* Motor Vehicle | | | | | | | | | | |
| | *Automobile, motorcycle, tractor, or other self-propelled vehicle, engine, or other mechanical apparatus, with charged electric storage battery, wet. See* Motor Vehicle | | | | | | | | | | |
| | 1-Aziridinyl phosphine oxide (tris). *See* Tris-(1-aziridinyl) phosphine oxide | | UN2501 | | | | | | | | |
| | *Bags, burlap, used.must be classed for the hazardous material previously contained in bag. See* 173.28, 173.29 | | | | | | | | | | |
| | Bags, sodium nitrate, empty and unwashed | Flammable solid | UN1359 | Flammable solid | None | 173.155 | Forbidden | 25 pounds | 1,2 | 1,2 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| * | Barium azide, wet, *50% or more water* | Flammable solid | UN1571 | Flammable solid | None | 173.239 | Forbiddenn | 1 pound | 1,2 | 1,2 | Stow away from heavy metals |
| | Barium chlorate | Oxidizer | UN1445 | Oxidizer | 173.153 | 173.163 | 25 pounds | 100 pounds | 1,2 | 1,2 | Separate from ammonium compounds. Stow away from powdered metals |
| * | Barium chlorate, wet | Oxidizer | NA1445 | Oxidizer | 173.153 | 173.163 | 25 pounds | 200 pounds | 1,2 | 1,2 | Separate from ammonium compounds. Stow away from powdered metals |
| E | Barium cyanide, solid (*RQ-10/4.54*) | Poison B | UN1565 | Poison | 173.370 | 173.370 | 25 pounds | 200 pounds | 1,2 | 1,2 | Stow away from acids |
| | Barium nitrate | Oxidizer | UN1446 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| A | Barium oxide. | ORM-B | UN1884 | None | 173.505 | 173.510 173.800 | 25 pounds | 100 pounds | | | |
| | Barium perchlorate | Oxidizer | UN1447 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | Stow away from powdered metals |
| | Barium permanganate | Oxidizer | UN1448 | Oxidizer | 173.153 | 172.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | Separate from ammonium compounds and hydrogen peroxide |
| | Barium peroxide *(binoxide, dioxide)* | Oxidizer | UN2630 | Oxidizer | 173.153 | 173.156 | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry |
| | Barrel, empty. *See* Drum, empty | | | | | | | | | | |
| | Battery charged with electrolyte (acid or alkaline battery fluid) | Corrosive material | NA2794 | Corrosive | None | 173.250 | Forbidden | 5 pints | 1,2 | 1,2 | |
| | *Battery, dry.* Not subject to Parts 170-189 of this subchapter | | | | | | | | | | |
| | Battery, electric storage, wet | Corrosive material | NA2794 | Corrosive | 173.260 | | Forbidden | No limit | 1,2 | 1,2 | |
| | Battery, electric storage, wet, with automobile, auto parts, engine (*or other specifically named mechanical apparatus*) | Corrosive material | NA2794 | Corrosive | 173.250 | 173.260 | No limit | No limit | 1/2 | 1,2 | Keep dry |
| | Battery, electric storage, wet with containers of corrosive battery fluid | Corrosive material | NA2794 | Corrosive | None | 173.258 | Forbidden | 2 gallons | 1,2 | 1,2 | |
| | *Battery fluid. See* Electrolyte (acid) *or* Alkaline battery fluid | | | | | | | | | | |
| W | Battery parts *(plates, grids, etc. unwashed, exhausted)* | ORM-C | | None | 173.505 | 173.915 | | | 1,2 | 4 | |
| | Benzaldehyde | Combustible liquid | UN1990 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| E | Benzene (benzol) (*RQ-1000/454*) | Flammable liquid | UN1114 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Benzene phosphorus dichloride | Corrosive material | UN2798 | Corrosive | None | 173.250a | Forbidden | 5 pints | 1 | 5 | |
| | Benzene phosphorus thiodichloride | Corrosive material | UN2799 | Corrosive | None | 173.250a | Forbidden | 5 pints | 1 | 5 | |
| * | Benzine | Flammable liquid | UN1115 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| E | Benzoic acid (*RQ-5000/2270*) | ORM-E | NA9094 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Benzonitrile (*RQ-1000/454*) | Combustible liquid | UN2224 | None | 173.118b | None | No limit | No limit | 2 | 2 | |
| E | Benzoyl chloride(*RQ-1000/454*) | Corrosive material | UN1736 | Corrosive | 173.244 | 173.247 | 1 quart | 1 quart | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| | Benzoyl peroxide | Organic peroxide | NA2087 | Organic peroxide | None | 173.157 173.158 | Forbidden | 25 pounds | 1,2 | 1 | |
| | Benzyl bromide (*bromotoluene, alpha*) | Corrosive material | UN1737 | Corrosive | None | 173.281 | Forbidden | 5 pints | 1 | 5 | Keep dry |
| E | Benzyl chloride (*RQ-100/45.4*) | Corrosive material | UN1738 | Corrosive | 173.244 | 173.295 | Forbidden | 1 quart | 1 | 4 | Keep dry |
| | Benzyl chloroformate (*or Benzyl chlorocarbonate*) | Corrosive | UN1739 | Corrosive | None | 173.288 | Forbidden | 5 pints | 1 | 5 | Keep dry |
| E | Beryllium chloride (*RQ-5000/2270*) | Poison B | NA1566 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 2 | 2 | |
| * | Beryllium compound, n.o.s. | Poison B | UN1566 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| E | Beryllium fluoride (*RQ-5000/2270*) | Poison B | NA1566 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 2 | 2 | |
| E | Beryllium nitrate (*RQ-5000/2270*) | Oxidizer | UN2464 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 2 | 2 | |
| | Black powder | Class A explosive | | Explosive A | None | 173.60 | Forbidden | Forbidden | 6 | 5 | |
| | Black powder igniter with empty cartridge bag | Class C explosive | NA0325 | Explosive C | None | 173.106 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Blasting agent, n.o.s. | Blasting agent | | Blasting agent | None | 173.114a | Forbidden | 100 pounds | 1,2 | 1,2 | |
| | Blasting caps--(*1,000 or fewer*) (*Show actual number*) | Class C explosive | NA0267 | Explosive C | None | 173.103 | Forbidden | Forbidden | 1,2 | 5 | Portable magazine or metal locker. Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded. |
| | Blasting caps--electric (*1,000 or fewer*) (*Show actual number*) | Class C explosive | | Explosive C | None | 173.103 | Forbidden | Forbidden | 1,2 | 5 | Portable magazine or metal locker. Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded. |
| | Blasting caps--electric (*more than 1,000*) (*Show actual number*) | Class A explosive | | Explosive A | None | 173.66 | Forbidden | Forbidden | 6 | 5 | Magazine. Do not stow blasting caps with any high explosives. Do not handle blasting caps at the same time high explosives are being loaded. |
| | Blasting caps--(*more than 1,000*) (*Show actual number*) | Class A explosive | | Explosive A | None | 173.66 | Forbidden | Forbidden | 6 | 5 | Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded. |

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## §172.101 Hazardous Materials Table (cont'd)

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | Blasting caps with metal clad mild detonating fuse--*(1,000 or fewer) (Show actual number)* | Class C explosive | NA0361 | Explosive C | None | 173.103 | Forbidden | Forbidden | 1,2 | 5 | Portable magazine or metal locker. Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded. |
| | Blasting caps with safety fuse--*(1,000 or fewer) (Show actual number)* | Class C explosive | NA0361 | Explosive C | None | 173.103 | Forbidden | Forbidden | 1,2 | 5 | Portable magazine or metal locker. Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded. |
| | Blasting caps with safety fuse--*(more than 1,000) (Show actual number)* | Class A explosive | | Explosive A | None | 173.66 173.67 | Forbidden | Forbidden | 6 | 5 | Do not stow blasting caps with any high explosive. Do not handle blasting caps at the same time high explosives are being loaded. |
| | *Blasting gelatin. See* High explosive | | | | | | | | | | |
| | *Blasting powder. See* Black powder | | | | | | | | | | |
| W | Bleaching powder, *containing 39% or less available chlorine* | ORM-C | UN2208 | None | 173.505 | 173.920 | | | 1,2 | 1,2 | Keep dry. Stow separate from flammable liquids and acids. (Stow away from oils, grease, and similar organic materials. |
| * | Boiler compound, liquid | Corrosive material | UN1760 | Corrosive | 173.244 | 173.249 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | *Bomb, explosive. See* Explosive bomb | | | | | | | | | | |
| | *Bomb, explosive with gas, smoke, or incendiary material. See* Explosive bomb | | | | | | | | | | |
| | *Bomb, fireworks. See Fireworks, special* | | | | | | | | | | |
| | *Bomb, gas, smoke, or incendiary, nonexplosive. See Chemical ammunition* | | | | | | | | | | |
| | *Bomb, incendiary, or smoke without bursting charge. See* Fireworks, special | | | | | | | | | | |
| | *Bomb, practice, with electric primer or electric squib (non-explosive)* | | | | 173.55 | | | | | | |
| | *Bomb, sand-loaded or empty (non-explosive)* | | | | 173.55 | | | | | | |
| A | Bone oil | ORM-A | | None | 173.505 | 173.510 | No limit | No limit | | | |
| | Booster, explosive | Class A explosive | | Explosive A | None | 173.69 | Forbidden | Forbidden | 6 | 5 | |
| * | Bordeaux arsenite, solid | Poison B | NA2759 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| * | Bordeaux arsenite, liquid | Poison B | NA2759 | Poison | 173.345 | 173,346 | 1 quart | 55 gallons | 1,2 | 1,2 | |
| | Boron tribromide | Corrosive material | UN2692 | Corrosive | None | 173.251 | Forbidden | 1 quart | 1 | 5 | |
| | Boron trichloride | Corrosive material | UN1741 | Corrosive | None | 173.251 | Fobidden | 1 quart | 1,2 | 5 | Stow in well ventilated space. Shade from radiant heat. Segregation same as for nonflammable gases. |
| | Boron trifluoride | Nonflammable gas | UN1008 | Nonflammable gas and Poison | None | 173.302 | Forbidden | Forbidden | 1 | 5 | Stow away from living quarters and foodstuffs |
| | Boron trifluoride-acetic acid complex | Corrosive material | UN1742 | Corrosive | 173.244 | 173.247 | 1 quart | 1 gallon | 1,2 | 1,2 | |
| | *Bottles, having previously contained a hazardous material and not cleaned. See* 173.29 | | | | | | | | | | |
| *W | Box toe board (*nitrocellulose base*) | ORM-C | | None | 173.505 | 173.925 | | | 1,3 | 1,3 | Provide cool stowage in a compartment having a temperature not exceeding 130 deg F., well away from any sources of heat, and in position to protect or move, even to jettison in event of fire. Separate from explosives, flammable liquids or gases, oxidizing materials, organic peroxides, or corrosive liquids. |
| * | Box toe gum | Combustible liquid | UN2060 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Box toe gum | Flammable liquid | UN2059 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Bromine | Corrosive material | UN1744 | Corrosive | None | 173.252 | Forbidden | 1 quart | 1 | 5 | Keep cool |
| | Bromine pentafluoride | Oxidizer | UN1745 | Oxidizer | None | 173.246 | Forbidden | 100 pounds | 1 | 5 | Shade from radiant heat. Segregation same as for corrosives |
| | Bromine trifluoride | Oxidizer | UN1746 | Oxidizer and Poison | None | 173.246 | Forbidden | 100 pounds | 1 | 5 | Shade from radiant heat. Segregation same as for corrosives |
| | Bromoacetic acid, solid | Corrosive material | UN1938 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry |
| * | Bromoacetic acid solution | Corrosive material | UN1938 | Corrosive | 173.244 | 173.245 | 1 quart | 1 quart | 1,2 | 1,2 | Glass carboys in hampers not permited under deck |
| | Bromoacetone, liquid | Poison A | UN1569 | Poison gas | None | 173.329 | Forbidden | Forbidden | 1 | 5 | Segregation same as for flammable liquids |
| | Bromobenzene | Combustible liquid | UN2514 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Bromotoluene, alpha. *See* Benzyl bromide | | UN1737 | | | | | | | | |
| | Brucine, solid (dimethoxy strychnine) | Poison B | UN1570 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| W | Burlap bags, cleaned (*vacuum cleaned, wheel cleaned, or otherwise mechanically brushed*). *See* Burlap cloth | | | | | | | | | | |
| W | Burlap bags, new. *See* Burlap cloth | | | | | | | | | | |
| AW | Burlap bags, used and unwashed, *or* not cleaned | ORM-C | | None | 173.930 | | No limit | No limit | 1 | 1 | Keep cool |
| W | Burlap cloth (*hessian*) | ORM-C | | None | 173.931 | | | | 1,2 | 1,2 | Keep dry. Stow away from organic liquids |
| | Burnt cotton, not repicked | Flammable solid | NA1325 | Flammable solid | None | 173.159 | Forbidden | Forbidden | 1 | 5 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| | Burnt fiber | Flammable solid | NA1325 | Flammable solid | None | 173.169 | Forbidden | Forbidden | 1,2 | 1,2 | Separate from flammable gases or liquids, oxidizing materials or organic peroxides. |
| | Burster, explosive | Class A explosive | | Explosive A | None | 173.69 | Forbidden | Forbidden | 6 | 5 | |
| | Butadiene, inhibited | Flammable gas | UN1010 | Flammable gas | 173.306 | 173.304 173.314 173.315 | Forbidden | 300 pounds | 1,2 | 1 | Stow away from living quarters |
| | Butane *or* Liquefied petroleum gas. *See* Liquefied petroleum gas | | UN1011 | | | | | | | | |
| E | Butyl acetate (*RQ-5000/2270*) | Flammable liquid | UN1123 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |

## §172.101 Hazardous Materials Table (cont'd)

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| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | n-Butyl acid phosphate. *See* Acid butyl phosphate | | UN1718 | | | | | | | | |
| * | Butyl alcohol. *See* Alcohol, n.o.s. | | UN1120 | | | | | | | | |
| | Butyl bromide, *normal* | Flammable liquid | UN1126 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Butyl chloride | Flammable liquid | UN1127 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Butyl ether | Flammable liquid | UN1149 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Butyl formate | Flammable liquid | UN1128 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | n-Butyl isocyanate | Flammable liquid | UN2485 | Flammable liquid and Poison | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Butyl mercaptan | Flammable liquid | UN2347 | Flammable liquid | None | 173.141 | Forbidden | 10 gallons | 1,3 | 5 | |
| | Butyl phosphoric acid. *See* Acid butyl phosphate | | UN1718 | | | | | | | | |
| E | n-Butyl phthalate (*RQ-100/45.4*) | ORM-E | NA9095 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Butyl trichlorosilane | Corrosive material | UN1747 | Corrosive | None | 173.280 | Forbidden | 10 gallons | 1 | 1 | Keep dry |
| E | Butylamine (*RQ-1000/454*) | Flammable liquid | UN1125 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Butyraldehyde | Flammable liquid | UN1129 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| E | Butyric acid (*RQ-5000/2270*) | Corrosive material | UN2820 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| E | Cadmium acetate (*RQ-100/45.4*) | ORM-E | NA2570 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Cadmium bromide (*RQ-100/45.4*) | ORM-E | NA2570 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Cadmium chloride (*RQ-100/45.4*) | ORM-E | NA2570 | None | None | 173.510 | No limit | No limit | 1,2 | 1,2 | If stowed under deck, must be stowed in a recoverable location |
| E | Calcium arsenate, solid (*RQ-1000/454*) | Poison B | UN1573 | Poison | 173.364 | 173.367 173.368 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| E | Calcium arsenite, solid (*RQ-1000/454*) | Poison B | NA1574 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| * | Calcium bisulfite solution. *See* Calcium hydrogen sulfite solution | | NA2693 | | | | | | | | |
| E | Calcium carbide (*RQ-5000/2270*) | Flammable solid | UN1402 | Flammable solid and dangerous when wet | None | 173.178 | Forbidden | 25 pounds | 1,2 | 1,2 | Keep dry. Stow away from copper, its alloys, and salts |
| | Calcium chlorate | Oxidizer | UN1452 | Oxidizer | 173.153 | 173.163 | 25 pounds | 100 pounds | 1,2 | 1,2 | Separate from ammonium compounds. Stow away from powdered metals and cyanide |
| | Calcium chlorite | Oxidizer | UN1453 | Oxidizer | None | 173.160 | Forbidden | 100 pounds | 1,2 | 1,2 | Separate from ammonium compounds, powdered materials, and cyanides |
| E | Calcium chromate (*RQ-1000/454*) | ORM-E | NA9096 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| AW | Calcium cyanamide, not hydrated, containing more than 0.1% calcium carbide | ORM-C | UN1403 | None | None | 173.345 | 25 pounds | 200 pounds | 1,2 | 1,2 | Segregation same as for flammable solids labeled Dangerous When Wet |
| *E | Calcium cyanide, solid *or* Calcium cyanide mixture, solid (*RQ-10/4.54*) | Poison B | UN1575 | Poison | 173.370 | | 25 pounds | 200 pounds | 1,2 | 1,2 | Stow away from corrosive liquids. Keep dry |
| E | Calcium dodecylbenzenesulfonate (*RQ-1000/454*) | ORM-E | NA9097 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| * | Calcium hydrogen sulfite solution | Corrosive material | UN1923 | Corrosive | 173.244 | 173.245 | 1 quart | 5 gallons | 1,2 | 1,2 | |
| EA | Calcium hydroxide (*RQ-5000/2270*) | ORM-B | NA9098 | None | None | 173.510 | 50 pounds | 100 pounds | 2 | 2 | |
| E | Calcium hypochlorite mixture, *dry. (Containing more than 39% available chlorine)* (*RQ-10/4.54*) | Oxidizer | UN1748 | Oxidizer | 173.153 | 173.217 | 50 pounds | 100 pounds | 1,2 | 1,2 | Keep cool and dry |
| | Calcium, metal | Flammable solid | NA1401 | Flammable solid and Dangerous when wet | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 4 | Keep cool and dry. Segregation same as for flammable solids labeled Dangerous When Wet |
| | Calcium, metal, crystalline | Flammable solid | NA1401 | Flammable solid and Dangerous when wet | None | 173.231 | Forbidden | 25 pounds | 1,2 | 5 | Keep cool and dry. Segregation same as for flammable solids labeled Dangerous When Wet |
| * | Calcium nitrate (*See Sec. 173.182 Note*) | Oxidizer | UN1454 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| EAW | Calcium oxide (*RQ-5000/2270*) | ORM-B | UN1910 | None | 173.505 | 173.850 | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry. Stow away from explosives, acids, combustible materials, and ammonium salts |
| | Calcium permanganate | Oxidizer | UN1456 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | Separate from ammonium compounds and hydrogen peroxide |
| | Calcium peroxide | Oxidizer | UN1457 | Oxidizer | 173.153 | 173.156 | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry |
| | Calcium phosphide | Flammable solid | UN1360 | Flammable solid and Dangerous when wet | None | 173.181 | Forbidden | 25 pounds | 1 | 5 | Keep cool and dry. Segregation same as for flammable solids labeled Dangerous When Wet |
| | Calcium resinate | Flammable solid | UN1313 | Flammable solid | None | 173.166 | Forbidden | 125 pounds | 1 | 5 | |
| | Calcium resinate, fused | Flammable solid | UN1314 | Flammable solid | None | 173.166 | Forbidden | 125 pounds | 1 | 5 | |
| AW | Camphene | ORM-A | NA9011 | None | 173.505 | 173.610 | No limit | No limit | 1,3 | 1,3 | Stow away from foodstuffs and living quarters |
| | Camphor oil | Combustible liquid | UN1130 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Cannon primers | Class C explosive | NA0378 | Explosive C | None | 173.107 | 50 pounds | 150 pounds | 1,3 | 5 | |
| | Caprylyl peroxide solution | Organic peroxide | NA2129 | Organic peroxide | 173.153 | 173.221 | 1 quart | 1 quart | 1,2 | 4 | Keep cool. Stow separate from combustible materials, explosives, or acids |
| | *Caps, blasting. See* Blasting caps | | | | | | | | | | |
| | *Caps, toy. See* Toy caps | | | | | | | | | | |
| EA | Captan (*RQ-10/4.54*) | ORM-A | NA2771 | None | None | 173.510 | 100 pounds | No limit | 2 | 2 | |
| EA | Carbaryl (*RQ-100/45.4*) | ORM-A | NA2757 | None | 173.505 | 173.510 | No limit | No limit | | | |
| E | Carbofuran (*RQ-10/4.54*) | Poison B | NA2757 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 2 | 2 | |

8 **§172.101 Hazardous Materials Table (cont'd)**

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| E | Carbolic acid, liquid *or* Phenol, liquid (*liquid tar acid containing over 50% benzophenol*) (*RQ-1000/454*) | Poison B | NA2312 | Poison | 173.345 | 173.349 | 1 quart | 55 gallons | 1,2 | 1,2 | |
| E | Carbolic acid, *or* Phenol (*RQ-1000/454*) | Poison B | NA1671 | Poison | 173.364 | 173.369 | 50 pounds | 250 pounds | 1,2 | 1,2 | |
| E | Carbon bisulfide, *or* Carbon disulfide (*RQ-5000/2270*) | Flammable liquid | UN1131 | Flammable liquid | None | 173.121 | Forbidden | Forbidden | 1 | 5 | Keep cool. Not permitted on any vessel transporting explosives |
| * | Carbon dioxide, liquefied | Nonflammable gas | UN2187 | Nonflammable gas | 173.306 | 173.304 173.314 173.315 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| * | Carbon dioxide-nitrous oxide mixture | Nonflammable gas | UN1015 | Nonflammable gas | 173.306 | 173.304 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| * | Carbon dioxide-oxygen mixture | Nonflammable gas | UN1014 | Nonflammable gas | 173.306 | 173.304 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| AW | Carbon dioxide, solid, *or* Dry ice, *or* Carbonice | ORM-A | UN1845 | None | None | 173.615 | 440 pounds | 440 pounds | 1 | 1 | Stow away from open ventilators. Stow away from cyanides or cyanide mixtures, liquid or dry |
| | Carbon monoxide | Flammable gas | UN1016 | Flammable gas | 173.306 | 173.302 | Forbidden | 150 pounds | 1 | 4 | |
| * | Carbon remover, liquid | Flammable liquid | UN1132 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| EAW | Carbon tetrachloride (*RQ-5000/2270*) | ORM-A | UN1846 | None | 173.505 | 173.620 | 1 quart | 55 gallons | 1,2 | 1,2 | Stow away from living quarters |
| | Carbonyl chloride. See Phosgene | | UN1076 | | | | | | | | |
| | *Carboys, empty, must be classed for the hazardous material previously contained in carboy. See* 173.29 | | | | | | | | | | |
| | Cartridge bags, empty, with black powder igniter | Class C explosive | NA0325 | Explosive C | None | 173.106 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Cartridge cases, empty, primed | Class C explosive | UN0379 | Explosive C | None | 173.107 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Cartridge, practice ammunition | Class C explosive | NA0362 | Explosive C | None | 173.101a | 50 pounds | 150 pounds | 1,2 | 1,2 | |
| | *Case oil. See* Gasoline *or* Naptha | | | | | | | | | | |
| | *Casinghead gasoline. See* Gasoline | | UN1257 | | | | | | | | |
| W | Castor Beans | ORM-C | | None | 173.505 | 173.952 | | | 1,2 | 1,2 | Stow away from living quarters and foodstuffs. Bulk shipments permitted in tight vans or containers only on cargo vessels (Castor beans only) |
| W | Castor pomace. *See* Castor beans | | | | | | | | | | |
| * | Caustic, potash, dry, solid, flake, bead, *or* granular. *See* Potassium hydroxide, dry, etc. | | UN1813 | | | | | | | | |
| * | Caustic potash, liquid *or* solution. *See* Potassium hydroxide solution | | UN1814 | | | | | | | | |
| | Caustic soda, dry, solid, flake, bead, *or* granular. *See* Sodium hydroxide, dry, etc. | | UN1823 | | | | | | | | |
| * | Caustic soda, liquid *or* solution. *See* Sodium hydroxide solution | | UN1824 | | | | | | | | |
| W | *Cellosolve acetate. See* Ethylene glycol monoethyl ether acetate | | | | | | | | | | |
| W | *Cellosolve. See* Ethylene glycol monoethyl ether | | | | | | | | | | |
| * | Cement, adhesive, n.o.s. *See* Cement, liquid, n.o.s. | | NA1133 | | | | | | | | |
| * | Cement, container, linoleum, tile, *or* wallboard, liquid | Flammable liquid | NA1133 | Flammable liquid | 173.118 | 173.132 | 1 quart | 15 gallons | 1,2 | 1 | |
| * | Cement, leather | Flammable liquid | NA1133 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Cement, liquid, n.o.s. | Combustible liquid | NA1133 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Cement, liquid, n.o.s. | Flammable liquid | NA1133 | Flammable liquid | 173.118 | 173.132 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Cement, pyroxylin | Flammable liquid | NA1133 | Flammable liquid | 173.118 | 173.132 | 1 quart | 15 gallons | 1,21,2 | 51 | |
| * | Cement, roofing, liquid | Flammable liquid | NA1133 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Cement, rubber | Flammable liquid | NA1133 | Flammable liquid | 173.118 | 173.132 | 1 quart | 15 gallons | 1,2 | 1 | |
| | Cesium metal | Flammable solid | UN1407 | Flammable solid and dangerous when wet | None | 173.206 | Forbidden | 25 pounds | 1,2 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |
| * | Charcoal, activated | Flammable solid | UN1362 | Flammable solid | 173.162 | 173.162 | 25 pounds | 200 pounds | 1,3 | 1,3 | |
| | Charcoal briquettes *or* briquets | Flammable solid | NA1361 | Flammable solid | 173.162 | 173.162 | 50 pounds | 50 pounds | 1,2 | 1,2 | |
| | Charcoal screenings, made from 'pinon' wood | Flammable solid | NA1361 | Flammable solid | 173.162 | 173.162 | 25 pounds | 200 pounds | 1,2 | 1, | |
| | Charcoal screenings, wet | Forbidden | | | | | | | | | |
| | Charcoal, shell | Flammable solid | NA1361 | Flammable solid | 173.162 | 173.162 | 25 pounds | 200 pounds | 1,2 | 1,2 | |
| | Charcoal, wet | Forbidden | | | | | | | | | |
| | Charcoal, wood, ground, crushed, granulated, *or* pulverized | Flammable solid | NA1361 | Flammable solid | 173.162 | 173.162 | 25 pounds | 200 pounds | 1,2 | 1,2 | |
| | Charcoal, wood, lump | Flammable solid | NA1361 | Flammable solid | 173.162 | 173.162 | 50 pounds | 50 pounds | 1,2 | 1,2 | |
| | Charcoal wood screenings, other than 'pinon' wood screenings | Flammable solid | NA1361 | Flammable solid | None | 173.162 | Forbidden | Forbidden | 1 | 1 | |
| | Charged oil well jet perforating gun (*total explosive contents in guns 20 pounds or more per motor vehicle*) | Class A explosive | | Explosive A | None | 173.53 173.80 | Forbidden | Forbidden | | | Forbidden |
| | Charged oil well jet perforating gun (*total explosive contents in guns not exceeding 20 pounds per motor vehicle or special offshore down hole tool pallet*) | Class C explosive | NA0124 | Explosive C | None | 173.53 173.110 | Forbidden | Forbidden | 1,2 | 5 | Forbidden |

## §172.101 Hazardous Materials Table (cont'd)

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| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | *Chemical ammunition explosive. See Ammunition, chemical, explosive* | | | | | | | | | | |
| | Chemical ammunition, nonexplosive (*containing a Poison B material*) | Poison B | UN2016 | Poison | 173.345 | 173.350 | Forbidden | 55 gallons | | | See correct shipping name of applicable Poison B material for stowage, special handling, and special segregation requirements |
| | Chemical ammunition, nonexplosive (*containing an irritating material*) | Irritating material | UN2017 | Irritant | None | 173.383 | Forbidden | 20 pounds | | | See correct shipping name of applicable Irritant material for stowage, special handling, and special segregation requirements |
| | Chemical ammunition, nonexplosive (*containing a Poison A material*) | Poison A | UN2016 | Poison gas | None | 173.330 | Forbidden | Forbidden | | | See correct shipping name of applicable Poison A material for stowage, special handling, and special segregation requirements |
| * | Chemical kit | Corrosive material | NA1760 | Corrosive | 173.286 | | 1 quart | 1 quart | 1,3 | 1,3 | |
| * | Chlorate and borate mixture (*containing more than 28% chlorate*) | Oxidizer | UN1458 | Oxidizer | 173.153 | 173.229 | 25 pounds | 100 pounds | 1,2 | 4 | Stow away from ammonium compounds and away from powdered metals |
| * | Chlorate and magnesium chloride mixture (*containing more than 28% chlorate*) | Oxidizer | UN1459 | Oxidizer | 173.153 | 173.229 | 25 pounds | 100 pounds | 1,2 | 4 | Stow away from ammonium compounds, and away from powdered metals |
| | *Chlorate explosive, dry. See* High explosive | | | | | | | | | | |
| | Chlorate, n.o.s. | Oxidizer | UN1461 | Oxidizer | 173.153 | 173.163 | 25 pounds | 100 pounds | 1,2 | 4 | Stow away from ammonium compounds and away from powdered metals |
| * | Chlorate, n.o.s., wet | Oxidizer | NA1461 | Oxidizer | 173.153 | 173.163 | 25 pounds | 200 pounds | 1,2 | 4 | Stow away from ammonium compounds and away from powdered metals |
| | Chlorate of potash. *See* Potassium chlorate | | UN1485 | | | | | | | | |
| | Chlorate of soda. *See* Sodium chlorate | | UN1495 | | | | | | | | |
| | Chlorate powder. *See* High explosive | | | | | | | | | | |
| *E | Chlordane, liquid (*RQ-1/.454*) | Combustible liquid | NA2762 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Chloric acid. (*See* chlorine dioxide hydrate) | | NA2626 | | | | | | | | |
| | Chloride of phosphorus. *See* Phosphorus trichloride | | NA1809 | | | | | | | | |
| | Chloride of sulfur. *See* Sulfur chloride | | NA1828 | | | | | | | | |
| W | Chlorinated lime (*chloride of lime.*) *See* Bleaching powder | | NA2208 | | | | | | | | |
| | Chlorine dioxide hydrate, frozen | Oxidizer | NA2626 | Oxidizer and Poison | None | 173.237 | Forbidden | Forbidden | | | Forbidden |
| E | Chlorine (*RQ-10/4.54*) | Nonflammable gas | UN1017 | Nonflammable gas and Poison | None | 173.304 173.314 173.315 | Forbidden | Forbidden | 1,2 | 5 | Stow in a well-ventilated space. Stow away from organic materials |
| | Chlorine trifluoride | Oxidizer | UN1749 | Oxidizer and Poison | None | 173.246 | Forbidden | 100 pounds | 1,3 | 5 | Stow in well ventilated area away from organic material |
| | 4-Chloro-o-toluidine hydrochloride | Poison B | UN1579 | Poison | None | 173.362 | Forbidden | 1 quart | 1,2 | 1,2 | |
| * | *Chloroacetic acid, liquid or solution. See* Monochloroacetic acid, liquid or solution | | UN1750 | | | | | | | | |
| | Chloroacetic acid, solid | Corrosive material | UN1751 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry |
| | Chloroacetophenone, gas, liquid, or solid (CN) | Irritating material | UN1697 | Irritant | None | 173.382 | Forbidden | 75 pounds | 1 | 5 | |
| | Chloroacetyl chloride | Corrosive material | UN1752 | Corrosive | None | 173.253 | Forbidden | 1 quart | 1 | 5 | Keep dry |
| | Chlorobenzene. *See* Chlorobenzol | | UN1134 | | | | | | | | |
| E | Chlorobenzol (*RQ-100/45.4*) | Flammable liquid | UN1134 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | p-Chlorobenzoyl peroxide | Organic peroxide | NA2413 | Organic peroxide | None | 173.157 173.158 | Forbidden | 25 pounds | 1 | 1 | |
| | *Chlorodinitrobenzene. See* Dinitrochlorobenzene | | UN1577 | | | | | | | | |
| | *Chlorodinitrobenzol. See* Dinitrochlorobenzol, solid | | | | | | | | | | |
| EAW | Chloroform (*RQ-5000/2270*) | ORM-A | UN1888 | None | 173.506 | 173.630 | 10 gallons | 55 gallons | 1,2 | 1,2 | Stow away from living quarters and foodstuffs |
| | Chlorophenyltrichlorosilane | Corrosive material | UN1753 | Corrosive | None | 173.280 | Forbidden | 10 gallons | 1 | 1 | Keep dry |
| | Chloropicrin, absorbed | Poison B | NA1583 | Poison | None | 173.357 | Forbidden | Forbidden | 1 | 5 | Keep cool |
| | Chloropicrin and methyl chloride mixture | Poison A | UN1582 | Flammable gas and Poison gas | None | 173.329 | Forbidden | Forbidden | 1 | 5 | Keep cool |
| | Chloropicrin and nonflammable, nonliquefied compressed gas mixture | Poison A | NA1955 | Nonflammable gas and Poison gas | None | 173.329 | Forbidden | Forbidden | 1 | 5 | Keep cool |
| | Chloropicrin, liquid | Poison B | UN1580 | Poison | None | 173.357 | Forbidden | Forbidden | 1 | 5 | Keep cool |
| | Chloropicrin mixture (*containing no compressed gas or Poison A liquid*) | Poison B | UN1583 | Poison | None | 173.357 | Forbidden | Forbidden | 1 | 5 | Keep cool |
| A | Chloroplatinic acid, solid | ORM-B | UN2507 | None | 173.505 | 173.510 173.800 | 25 pounds | 100 pounds | | | |
| | 2-Chloropropene | Flammable liquid | UN2356 | Flammable liquid | None | 173.119 | Forbidden | 10 gallons | 1,2 | 5 | |
| E | Chlorosulfonic acid (*RQ-1000/454*) | Corrosive material | UN1754 | Corrosive | 173.244 | 173.254 | 1 quart | 1 quart | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| | Chlorosulfonic acid-sulfur trioxide mixture | Corrosive material | UN1754 | Corrosive | 173.144 | 173.254 | 1 quart | 1 quart | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| EA | Chlorpyrifos (*RQ-1/0.454*) | ORM-A | NA2783 | None | None | 173.510 | 100 pounds | No limit | 2 | 2 | |
| E | Chromic acetate (*RQ-1000/454*) | ORM-E | NA9101 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Chromic acid mixture, dry (*RQ-1000/454*) | Oxidizer | NA1463 | Oxidizer | 173.153 | 173.164 | 25 pounds | 100 pounds | 1,2 | 1,2 | Stow away from foodstuffs |
| E | Chromic acid, solid (*RQ-1000/454*) | Oxidizer | UN1463 | Oxidizer | 173.153 | 173.164 | 25 pounds | 100 pounds | 1,2 | 1,2 | Stow away from foodstuffs. Stow separate from flammable liquids and solids |
| *E | Chromic acid solution (*RQ-1000/454*) | Corrosive material | UN1755 | Corrosive | 173.244 | 173.287 | 1 quart | 1 gallon | 1 | 1 | |
| | Chromic anhydride. *See* Chromic acid, solid | | NA1463 | | | | | | | | |
| | Chromic fluoride, solid | Corrosive material | UN1756 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| * | Chromic fluoride solution | Corrosive material | UN1757 | Corrosive | 173.244 | 173.245 | 1 quart | 1 gallon | 1,2 | 1,2 | |
| E | Chromic sulfate (*RQ-1000/454*) | ORM-E | NA9100 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Chromic trioxide. *See* Chromic acid, solid | | UN1463 | | | | | | | | |

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## §172.101 Hazardous Materials Table (cont'd)

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | Chromium oxychloride *or* Chromyl chloride | Corrosive material | UN1758 | Corrosive | None | 173.247 | Forbidden | 1 gallon | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| E | Chromous chloride (*RQ-1000/454*) | ORM-E | NA9102 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | *Cigar and cigarette lighter fluid. See* Lighter fluid | | UN1226 | | | | | | | | |
| * | Cigarette lighter (*or other similar ignition device*) | Flammable gas | UN1057 | Flammable gas | 173.21 175.10 | 173.308 | 21 ounces | 25 pounds | 1 | 1 | |
| * | Cigarette lighter (*or other similar ignition device*) | Flammable liquid | NA1993 | Flammable liquid | 173.21 175.10 | 173.118 | Forbidden | Forbidden | 1 | 1 | |
| | Cigarette load | Class C explosive | NA0337 | Explosive C | None | 173.111 | 50 pounds | 150 pounds | 1,2 | 1,2 | |
| | *Cloud gas cylinder. See* Chemical ammunition | | | | | | | | | | |
| | Coal briquettes, hot | Forbidden | | | | | | | | | |
| | Coal facings. *See* Coal ground bituminous, *etc.* | | | | | | | | | | |
| | *Coal gas. See* Hydrocarbon gas, nonliquefied | | | | | | | | | | |
| | Coal, ground bituminous, sea coal, coal facings, *etc.* | Flammable solid | NA1361 | Flammable solid | 173.165 | | Forbidden | Forbidden | 1 | 1 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| | Coal oil (*export shipment only*). *See* Kerosene | | NA1223 | | | | | | | | |
| * | Coal tar distillate | Combustible liquid | NA1137 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Coal tar distillate | Flammable liquid | NA1136 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Coal tar dye, liquid (*not otherwise specifically named in Sec. 172.101*) | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 173.249a | 1 quart | 10 gallons | 1,2 | 1,2 | |
| * | Coal tar light oil | Combustible liquid | NA1137 | None | 173.118a | | | | 1,2 | 1,2 | |
| * | Coal tar light oil | Flammable liquid | NA1136 | Flammable liquid | 173/.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Coal tar naptha | Combustible liquid | NA2553 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Coal tar naptha | Flammable liquid | NA2553 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Coal tar oil | Combustible liquid | NA1137 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Coal tar oil | Flammable liquid | NA1136 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| * | Coating solution | Flammable liquid | UN1139 | Flammable liquid | 173.118 | 173.132 | 1 quart | 15 gallons | 1,2 | 1 | |
| | Cobalt resinate, precipitated | Flammable solid | UN1318 | Flammable solid | None | 173.166 | Forbidden | 125 pounds | 1,2 | 1,2 | |
| E | Cobaltous bromide (*RQ-1000/454*) | ORM-E | NA9103 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Cobaltous formate (*RQ-1000/454*) | ORM-E | NA9104 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Cobaltous sulfamate (*RQ-1000/454*) | ORM-E | NA9105 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Cocculus, solid (*fishberry*) | Poison B | UN1584 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| *W | Coconut meal pellets *containing at least 6% and not more than 13% moisture and not more than 10% residual fat content* | ORM-C | | None | 173.505 | 173.955 | | | 1,2 | 4 | Keep dry |
| | Coir. *See* Fibers | | NA1372 | | | | | | | | |
| | Coke, hot | Forbidden | | | | | | | | | |
| | Collodion | Flammable liquid | NA2060 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | *Collodion cotton, wet. See* Nitrocellulose, wet | | UN2555 | | | | | | | | |
| | Cologne spirits (*alcohol*) | Flammable liquid | UN1987 | Flammable liquid | 173.118 | 173.125 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Columbian spirits (*wood alcohol*) | Flammable liquid | UN1230 | Flammable liquid | 173.118 | 173.125 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Combination fuze | Class C explosive | NA0367 | Explosive C | None | 173.105 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Combination primer | Class C explosive | NA0378 | Explosive C | None | 173.107 | 50 pounds | 150 pounds | 1,3 | 5 | |
| | Combustible liquid, n.o.s. | Combustible liquid | UN1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | *Commercial shaped charge. See* High explosive | | | | | | | | | | |
| | Common fireworks. *See* Fireworks, common | | | | | | | | | | |
| * | Compound, cleaning, liquid | Flammable liquid | NA1993 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Compound, cleaning, liquid | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 | 1 quart | 1 quart | 1,2 | 1,2 | |
| * | Compound, cleaning, liquid | Combustible liquid | NA1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Compound, cleaning, liquid (containing hydrochloric (muriatic) acid) | Corrosive material | NA1789 | Corrosive | 173.244 | 173.263 | 1 quart | 1 gallon | 1 | 1 | |
| * | Compound, cleaning, liquid (containing hydrofluoric acid) | Corrosive material | NA1790 | Corrosive | 172.244 | 173.256 | 1 quart | 1 gallon | 1 | 4 | |
| * | Compound, cleaning liquid (*containing phosphoric acid, acetic acid, sodium potassium hydroxide*) | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 173.249a | 1 quart | 1 quart | 1,2 | 1,2 | |
| * | Compound, enamel | Flammable liquid | NA1263 | Flammable liquid | 173.118 | 173.128 | 1 quart | 55 gallons | 1,2 | 1 | |
| * | Compound, lacquer, paint, *or* varnish, removing, reducing, or thinning, liquid | Combustible liquid | NA1142 | None | 173.118a | | | | 1,2 | 1,2 | |
| * | Compound, lacquer, paint, *or* varnish removing, liquid | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 | 1 quart | 1 gallon | 1,2 | 1,2 | |
| * | Compound, lacquer, paint, *or* varnish, removing, reducing, *or* thinning, liquid | Flammable liquid | NA1142 | Flammable liquid | 173.118 | 173.128 | 1 quart | 55 gallons | 1,2 | 1 | |
| * | Compound, polishing, liquid | Flammable liquid | NA1142 | Flammable liquid | 173.118 | 173.129 | 1 | 55 gallons | 1,2 | 1 | |

## §172.101 Hazardous Materials Table (cont'd)

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| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| * | Compound, rust preventing *or* Compound, rust removing | Corrosive material | NA1760 | Corrosive | 173.144 | 173.245 | 1 quart | 1 gallon | 1,2 | 1,2 | |
| * | Compound, tree *or* weed killing, liquid | Combustible liquid | NA1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Compound, tree *or* weed killing, liquid | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 | 1 quart | 1 quart | 1,2 | 1,2 | |
| * | Compound, tree *or* weed killing, liquid | Flammable liquid | NA1993 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Compound, tree *or* weed killing, liquid | Poison B | NA2810 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1,2 | |
| * | Compound, tree *or* weed killing, solid | Oxidizer | NA1479 | Oxidizer | 173.153 | 173.154<br>173.229 | 25 pounds | 100 pounds | | | |
| * | Compound, vulcanizing, liquid | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 | 1 quart | 1 quart | 1,2 | 1,2 | |
| * | Compound, vulcanizing, liquid | Flammable liquid | NA1142<br>NA1760 | Flammable liquid | 173.118 | 172.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Compound, water treatment, liquid. *See* Water treatment, liquid | | | | | | | | | | |
| | Compressed gas, n.o.s. | Flammable gas | UN1954 | Flammable gas | 173.306 | 173.302<br>173.304<br>173.305 | Forbidden | 300 pounds | 1 | 4 | |
| | Compressed gas, n.o.s. | Nonflammable gas | UN1956 | Nonflammable gas | 173.306 | 173.302<br>173.304<br>173.305 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| | Consumer commodity | ORM-D | | None | None | 173.510<br>173.1200 | 65 pounds gross | 65 pounds gross | | | Not subject to requirements of Part 176 |
| | *Container, reused or empty, must be classed for the hazardous material previously contained. See* 173.28, 173.29 | | | | | | | | | | |
| E | Copper acetoarsenite, solid (*RQ-100/45.4*) | Poison B | UN1585 | Poison | 173.364 | 173.367 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Copper arsenite, solid | Poison B | UN1586 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| EA | Copper chloride (*RQ-10/4.54*) | ORM-B | UN2802 | None | 173.505 | 173.510<br>173.800 | 25 pounds | 100 pounds | | | |
| | Copper cyanide | Poison B | UN1587 | Poison | 173.370 | | 25 pounds | 200 pounds | 1,2 | 1,2 | Stow away from acids |
| W | Copra | ORM-C | UN1363 | None | 173.505 | 173.960 | | | 1,2 | 1,2 | Segregation same as for flammable solids. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| | *Copra pellets. See* Coconut meal pellets | | | | | | | | | | |
| | Cordeau detonant fuse | Class C explosive | NA0289 | Explosive C | None | 173.104 | 50 pounds | 300 pounds | 1,2 | 1,2 | |
| | Corrosive battery fluid. *See* Electrolyte (acid), *or* Alkaline Corrosive battery fluid | | | | | | | | | | |
| | Corrosive liquid, n.o.s. | Corrosive material | UN1760 | Corrosive | 173.244 | 173.245<br>173.245a | 1 quart | 1 quart | 1 | 4 | For material that meets only the corrosion to skin criteria of 49 CFR 173.240(a)(1), 'under deck' stowage is also authorized if the description includes the additional entry specified by Sec. 172.172(63). |
| | Corrosive solid, n.o.s. | Corrosive material | UN1759 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1 | 4 | For material that meets only the corrosion to skin criteria of 49 CFR 173.240(a)(1), 'under deck' stowage is also authorized if the description includes the additional entry specified by Sec. 172.203(63). |
| * | Cosmetics, n.o.s. | Combustible liquid | NA1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Cosmetics, n.o.s. | Flammable liquid | NA1993 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Cosmetics, n.o.s. | Flammable solid | NA1325 | Flammable solid | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| * | Cosmetics, n.o.s. | Oxidizer | NA1479 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| * | Cosmetics, n.o.s., liquid | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 | 1 quart | 1 quart | 1,2 | 1,2 | |
| * | Cosmetics, n.o.s., solid | Corrosive material | NA1759 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry |
| W | Cotton | ORM-C | | None | 173.505 | 173.965 | | | 1,2 | 1,2 | Segregation same as for flammable solids. *See* 176.900 to 176.904 |
| W | Cotton batting | ORM-C | | None | 173.505 | 173.970 | | | 1,2 | 1,2 | Keep dry. Stow away from vegetable or animal oils. *See* 176.900 to 176.904 |
| W | Cotton batting dross. *See* Cotton batting | | | | | | | | | | |
| | *Cotton, burnt. See* Burnt cotton | | | | | | | | | | |
| W | Cotton seed hull fiber *or* shavings, pulp, *or* cut linters. See Cotton batting | | | | | | | | | | |
| | Cotton sweepings. *See* Cotton waste | | | | | | | | | | |
| W | Cotton wadding. *See* Cotton batting | | | | | | | | | | |
| W | Cotton waste | ORM-C | | None | 173.505 | 173.975 | | | 1,2 | 1,2 | Keep dry. Stow away from vegetable or animal oils. *See* 176.900 to 176.904 |
| | Cotton waste, oily (*with more than 5% of animal or vegetable oil*) | Flammable solid | UN1364 | Flammable solid | | | Forbidden | Forbidden | 1,2 | 1,2 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| E | Coumaphos (*RQ-10/4.54*) | Poison B | NA2783 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 2 | 2 | |
| | Creosote, coal tar | Combustible liquid | NA1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | *Creosote oil. See* Creosote coal tar | | | | | | | | | | |
| E | Cresol (*RQ-1000/454*) | Corrosive material | NA2076 | Corrosive | 173.244 | 173.245 | 1 gallon | 55 gallons | 2 | 2 | |
| E | Crotonaldehyde (*RQ-100/45.4*) | Flammable liquid | UN1143 | Flammable liquid and Poison | 173.118 | 173.119 | 1 quart | 1 gallon | 1,2 | 1 | |
| | Crotonic acid | Corrosive material | UN2823 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Crotonylene | Flammable liquid | UN1144 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | |
| | Crude nitrogen fertilizer solution (more than 25.3 p.s.i.g.) | Nonflammable gas | NA1043 | Nonflammable gas | 173.306 | 173.304<br>173.314 | Forbidden | 300 pounds | 1,3 | 1,3 | |
| * | Crude oil, petroleum | Combustible liquid | NA1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |

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## §172.101 Hazardous Materials Table (cont'd)

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| * | Crude oil, petroleum | Flammable liquid | NA1993 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Cumene hydroperoxide | Organic peroxide | NA2116 | Organic peroxide | 173.153 | 173.224 | 1 quart | 1 quart | 1,2 | 4 | |
| E | Cupric acetate (*RQ-100/45.4*) | ORM-E | NA9106 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | *Cupric cyanide. See* Copper cyanide | | UN1587 | | | | | | | | |
| E | Cupric nitrate (*RQ-100/45.4*) | Oxidizer | NA1479 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 2 | 2 | |
| E | Cupric oxalate (*RQ-100/45.4*) | ORM-E | NA2449 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Cupric sulfate, ammoniated (*RQ-100/45.4*) | ORM-E | NA9110 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Cupric sulfate (*RQ-10/4.54*) | ORM-E | NA9109 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Cupric tartrate (*RQ-100/45.4*) | ORM-E | NA9111 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| * | Cuprietylene-diamine solution | Corrosive material | UN1761 | Corrosive | 173.244 | 173.249 | 1 quart | 1 gallon | 1,2 | 1,2 | |
| * | Cyanide or cyanide mixture, dry | Poison B | UN1588 | Poison | 173.364 | 173.370 | 25 pounds | 200 pounds | 1,2 | 1,2 | Keep dry. Stow away from acids |
| | Cyanogen bromide | Poison B | UN1889 | Poison | None | 173.379 | Forbidden | 25 pounds | 1 | 5 | Shade from radiant heat. Segregation same as for corrosive materials |
| E | Cyanogen chloride *containing less than 0.9% water* (*RQ-10/4.54*) | Poison A | UN1589 | Nonflammable gas and Poison Gas | None | 173.328 | Forbidden | Forbidden | 1 | 5 | Shade from radiant heat |
| | Cyanogen gas | Poison A | UN1026 | Flammable gas and Poison Gas | None | 173.328 | Forbidden | Forbidden | 1 | 5 | |
| E | Cyclohexane (*RQ-1000/454*) | Flammable liquid | UN1145 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | |
| | Cyclohexanone peroxide, *50 to 85% peroxide* | Organic peroxide | NA2119 | Organic peroxide | 173.157 | 173.158 | Forbidden | 25 pounds | 1 | 1 | |
| | Cyclohexanone peroxide and bis (1-hydroxy cyclohexyl) peroxide mixture. *See appropriate cyclohexanone peroxide entry immediately preceding* | | | | | | | | | | |
| | Cyclohexanone peroxide, *not over 50% peroxide* | Organic peroxide | NA2896 | Organic peroxide | 173.153 | 173.154 | 2 pounds | 25 pounds | 1,2 | 1,2 | |
| | Cyclohexenyl trichlorosilane | Corrosive material | UN1762 | Corrosive | None | 173.280 | Forbidden | 10 gallons | 1 | 1 | Keep dry |
| | Cyclohexyl trichlorosilane | Corrosive material | UN1763 | Corrosive | None | 173.280 | Forbidden | 10 gallons | 1 | 1 | Keep dry |
| | Cyclopentane | Flammable liquid | UN1146 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | |
| | Cyclopentane, methyl | Flammable liquid | UN2298 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | |
| | Cyclopropane | Flammable gas | UN1027 | Flammable gas | 173.306 | 173.304 | Forbidden | 300 pounds | 1,2 | 1 | |
| | *Cyclotetramethylenetetranitramine, wet with not less that 10 percent water. See high explosive.* | | | | | | | | | | |
| | *Cyclotrimethylenetrinitramine, desensitized. See* High explosive | | | | | | | | | | |
| | *Cyclotrimethylenetrinitramine, wet with not less than 10% water. See* High explosive | | | | | | | | | | |
| | *Cylinder, empty, including ton tanks, must be classed for the hazardous material previously contained in cylinder. See* 173.29 | | | | | | | | | | |
| EA | 2,4-D esters. *See* 2,4-Dichlorophenoxyacetic acid esters | | NA2765 | | | | | | | | |
| | 2,4-D. *See* 2,4-Dichlorophenoxyacetic acid | | NA2765 | | | | | | | | |
| EA | DDT *or* Dichlorodiphenyltrichloroethane (*RQ-1/.454*) | ORM-A | NA2761 | None | 173.505 | 173.510 | No limit | No limit | | | |
| | *Dead oil. See* Creosote, coal tar | | | | | | | | | | |
| | Decaborane | Flammable solid | UN1868 | Flammable solid and Poison | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Decahydronaphthalene | Combustible liquid | UN1147 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | *Decalin. See* Decahydronaphthalene | | UN1147 | | | | | | | | |
| | Delay electric igniter | Class C explosive | NA0206 | Explosive C | None | 173.106 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Denatured alcohol. *See* Alcohol, n.o.s. | | UN1095 | | | | | | | | |
| | *Depth bomb. See* Explosive bomb | | | | | | | | | | |
| | Detonating fuze, Class A, *with or without radioactive components* | Class A explosive | | Explosive A | None | 173.69 | Forbidden | Forbidden | 6 | 5 | |
| | Detonating fuze, Class C explosive | Class C explosive | UN0257 | Explosive C | None | 173.113 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Detonating primer | Class A explosive | | Explosive A | None | 173..68 | Forbidden | Forbidden | 6 | 5 | |
| * | Di-(2-ethylhexyl) phosphoric acid | Corrosive material | NA1902 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| * | Diacetone alcohol | Flammable liquid | UN1148 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Diacetyl | Flammable liquid | UN2346 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| EA | Diazinon (*RQ-1/.454*) | ORM-A | NA2783 | None | 173.505 | 173.510 | No limit | No limit | | | |
| | Diazodinitrophenol. *See* initiating explosive | | | | | | | | | | |
| A | Dibromodifluoromethane | ORM-A | UN1941 | None | 173.505 | 173.510 173.605 | 10 gallons | 55 gallons | | | |
| W | 1,2-Dibromoethane. *See* Ethylene dibromide | | UN1605 | | | | | | | | |
| E | Dicamba (*RQ-1000/454*) | ORM-E | NA2769 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Dichlobenil (*RQ-1000/454*) | ORM-E | NA2769 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Dichlone (*RQ-1/0.454*) | ORM-E | NA2761 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | *1,1-Dichloro-2,2-bis (parachlorophenyl) ethane. See* TDE | | | | | | | | | | |
| | Dichloroacetic acid | Corrosive material | UN1764 | Corrosive | 173.244 | 173.245 | 1 quart | 1 quart | 1,2 | 1,2 | Glass carboys in hampers not permitted under deck |

## §172.101 Hazardous Materials Table (cont'd)

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| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | Dichloroacetyl chloride | Corrosive material | UN1765 | Corrosive | 173.244 | 173.247 | 1 quart | 1 gallon | 1 | 4 | Keep dry |
| EA | Dichlorobenzene, ortho, liquid (*RQ-100/45.4*) | ORM-A | UN1591 | None | 173.505 | 173.510 | No limit | No limit | | | |
| EA | Dichlorobenzene, para, solid (*RQ-100/45.4*) | ORM-A | UN1592 | None | 173.505 | 173.510 | No limit | No limit | | | |
| | Dichlorobutene | Flammable liquid | NA2936 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| A | Dichlorodifluoroethylene | ORM-A | NA9018 | None | 173.505 | 173.510 173.605 | 10 gallons | 55 gallons | | | |
| | Dichlorodifluoromethane | Nonflammable gas | UN1028 | ANonflammable gas | 173.306 | 173.304 173.314 173.315 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| | Dichlorodifluoromethane and difluoroethane mixture (*constant boiling mixture*) | Nonflammable gas | UN2602 | Nonflammable gas | 173.306 | 173.304 173.314 173.315 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| | Dichlorodifluoromethane-dichlorotetrafluoroethane mixture | Nonflammable gas | NA1956 | Nonflammable gas | 173.306 | 173.304 173.314 173.315 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| | Dichlorodifluoromethane monochlorodifluoromethane mixture | Nonflammable gas | NA1956 | Nonflammable gas | 173.306 | 173.304 173.314 173.315 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| * | Dichlorodifluoromethane-trichloromonofluoromethane mixture | Nonflammable gas | NA1956 | Nonflammable gas | 173.306 | 173.304 173.314 173.315 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| | Dichlorodifluoromethane-trichloromonofluoromethane-monochloro difluoromethane mixture | Nonflammable gas | NA1956 | Nonflammable gas | 173.306 173.505 | 173.304 173.314 173.315 173.510 | 150 pounds-None | | | | |
| | Dichlorodifluoromethane-trichlorotrifluoroethane mixture | Nonflammable gas | NA1956 | Nonflammable gas | 173.306 | 173.304 173.314 173.315 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| | Dichlorodiphenyltrichloroethane. *See* DDT | | NA2761 | | | | | | | | |
| | Dichloroethylene | Flammable liquid | UN1150 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Dichloroisopropyl ether | Corrosive material | UN2490 | Corrosive | 173.244 | 173.254 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| A | Dichloromethane *or* methylene chloride | ORM-A | UN1593 | None | 173.505 | 173.510 173.605 | 10 gallons | 55 gallons | | | |
| * | Dichloropentane | Flammable liquid | UN1152 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| EA | 2,4-Dichlorophenoxyacetic acid esters (*RQ-100/45.4*) | ORM-A | NA2765 | None | None | 173.510 | 50 pounds | No limit | 2 | 2 | |
| EA | 2,4-Dichlorophenoxyacetic acid (*RQ-100/45.4*) | ORM-A | NA2765 | None | 173.505 | 173.510 | | | | | |
| | Dichlorophenyltrichlorosilane | Corrosive material | UN1766 | Corrosive | None | 173.280 | Forbidden | 10 gallons | 1 | 1 | Keep dry |
| E | Dichloropropane. *See* Propylene dichloride | | UN1279 | | | | | | | | |
| E | Dichloropropene and propylene dichloride mixture (*RQ-5000/2270*) | Flammable liquid | NA2047 | Flammable liquid | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| E | Dichloropropene (*RQ-5000/2270*) | Flammable liquid | UN2047 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 2 | 2 | |
| E | 2,2-Dichloropropionic acid (*RQ-5000/2270*) | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 | 2 gallons | 10 gallons | 2 | 2 | |
| E | Dichlorvos (*RQ-10/4.54*) | Poison B | NA2783 | Poison | 173.364 | 173.365 | Forbidden | 1 quart | 2 | 2 | |
| | Dicumyl peroxide *50% solution* | Organic peroxide | NA2121 | Organic peroxide | 173.153 | 173.224 | 1 quart | 1 quart | 1,2 | 4 | |
| | Dicumyl peroxide, dry | Organic peroxide | UN2121 | Organic peroxide | 173.153 | 173.154 | 2 pounds | 25 pounds | 1,2 | 1,2 | |
| EA | Dieldrin (*RQ-1/.454*) | ORM-A | NA2761 | None | 173.505 | 173.510 | No limit | No limit | | | |
| | Diesel Fuel. *See* Fuel oil | | | | | | | | | | |
| | Diethyl cellosolve. *See* Ethylene glycol diethyl ether | | UN1153 | | | | | | | | |
| | Diethyl dichlorosilane | Flammable liquid | UN1767 | Flammable liquid | None | 173.135 | Forbidden | 10 gallons | 1 | 1 | Keep dry. Segregation same as for corrosives |
| | Diethyl ketone | Flammable liquid | UN1156 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| E | Diethylamine (*RQ-1000/454*) | Flammable liquid | UN1154 | Flammable liquid | 173.118 | 173.119 | Forbidden | 5 pints | 1,3 | 4 | |
| | Diethylene glycol dinitrate. *See* 173.51 | Forbidden | | | | | | | | | |
| | 1,1-Difluoro 1-chloroethane. *See* Difluoromonochloroethane | | UN2517 | | | | | | | | |
| | Difluoroethane | Flammable gas | UN1030 | Flammable gas | 173.306 | 173.304 173.314 173.315 | Forbidden | 300 pounds | 1,2 | 1 | |
| | Difluoromonochloroethane | Flammable gas | UN2537 | Flammable gas | 173.306 | 173.304 173.314 173.315 | Forbidden | 300 pounds | 1,2 | 1 | |
| | Difluorophosphoric acid, anhydrous | Corrosive material | UN1768 | Corrosive | None | 173.275 | Forbidden | 1 gallon | 1,2 | 1,2 | |
| | Dihydropyran | Flammable liquid | UN2376 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 4 | |
| | Diisobutyl ketone | Combustible liquid | UN1157 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Diisooctyl acid phosphate | Corrosive material | UN1902 | Corrosive | 173.144 | 173.296 | 1 quart | 1 quart | 1,2 | 1,2 | Glass carboys in hampers not permitted under deck |
| | Diisopropylamine | Flammable liquid | UN1158 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Diisopropylbenzene hydroperoxide solution, *not over 60% peroxide* | Organic peroxide | NA2171 | Organic peroxide | 173.153 | 173.224 | 1 quart | 1 quart | 1,2 | 4 | |
| | Diisopropylethanolamine | Corrosive material | UN2825 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Diisopropylether | Flammable liquid | UN1159 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | |

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## §172.101 Hazardous Materials Table (cont'd)

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | Dimethyl carbonate | Flammable liquid | UN1161 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Dimethyl ether | Flammable gas | UN1033 | Flammable gas | 173.306 | 173.304 173.314 173.315 | Forbidden | 300 pounds | 1,2 | 1 | |
| | Dimethyl sulfate | Corrosive material | UN1595 | Corrosive | None | 173.255 | Forbidden | 1 quart | 1 | 5 | Keep cool |
| | Dimethyl sulfide | Flammable liquid | UN1164 | Flammable liquid | None | 173.119 | Forbidden | 10 gallons | 1,2 | 5 | |
| E | Dimethylamine, anhydrous (*RQ-1000/454*) | Flammable gas | UN1032 | Flammable gas | 173.306 | 173.304 173.314 173.315 | Forbidden | 300 pounds | 1,2 | 4 | |
| E | Dimethylamine, aqueous solution (*RQ-1000/454*) | Flammable liquid | UN1160 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | 2,3-Dimethylbutane | Flammable liquid | UN2457 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | |
| | 1,4-Dimethylcyclohexane | Flammable liquid | UN2263 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Dimethyldichlorosilane | Flammable liquid | UN1162 | Flammable liquid | None | 173.135 | Forbidden | 5 pints | 1,2 | 1 | |
| | Dimethylhexane dihydroperoxide, dry | Forbidden | | | | | | | | | |
| | Dimethylhexane dihydroperoxide, (with 30% or more water) | Organic peroxide | NA2174 | Organic peroxide | None | 173.157 | Forbidden | 25 pounds | 1 | 1 | |
| | Dimethylhydrazine, unsymmetrical (*UDMH*) | Flammable liquid | UN1163 | Flammable liquid and Poison | None | 173.145 | Forbidden | 5 pints | 1,2 | 1 | Keep dry. Separate from corrosive and oxidizing materials, and organic peroxides. |
| E | Dinitrobenzene, solid, *or* dinitrobenzol, solid (*RQ-1000/454*) | Poison B | NA1597 | Poison | 173.364 | 173.371 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| *E | Dinitrobenzene solution (*RQ-1000/454*) | Poison B | NA1597 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1,2 | |
| | Dinitrochlorobenzol, solid *or* Dinitrochlorobenzene | Poison B | UN1577 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| A | Dinitrocyclohexylphenol | ORM-A | NA9026 | None | 173.505 | 173,510 | No limit | No limit | | | |
| *E | Dinitrophenol solution (*RQ-1000/454*) | Poison B | UN1599 | Poison | 173.345 | 173.362a | 1 quart | 65 pounds | 1,2 | 1,2 | Stow away from heavy metals and their compounds. If flash point is 141 deg F or less segregation same as for flammable liquids |
| E | Dinitrotoluene (*RQ-1000/454*) | ORM-E | UN1600 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Dioxane | Flammable liquid | UN1165 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,.2 | 1 | |
| | Dioxolane | Flammable liquid | UN1166 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Diphenyl dichlorosilane | Corrosive material | UN1769 | Corrosive | None | 173.280 | Forbidden | 10 gallons | 1 | 1 | |
| | Diphenyl methyl bromide, solid | Corrosive material | UN1770 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1 | 4 | |
| * | Diphenyl methyl bromide solution | Corrosive material | UN1770 | Corrosive | 173.244 | 173.247 | 1 quart | 1 gallon | 1,2 | 1,2 | |
| | Diphenylaminechloroarsine (*DM*) | Irritating material | UN1698 | Irritant | None | 173.382 | Forbidden | 75 pounds | 1 | 5 | |
| | *Diphosgene. See* Phosgene | | | | | | | | | | |
| E | Diquat (*RQ-1000/454*) | ORM-E | NA2781 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| * | Disinfectant, liquid | Corrosive material | UN1903 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1 | 4 | |
| * | Disinfectant, liquid | Poison B | UN1601 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1 | |
| * | Disinfectant, liquid, n.o.s. | Combustible liquid | NA1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Disinfectant, solid | Poison B | UN1601 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | | | |
| | Dispersant Gas *or* Refrigerant Gas. *See* 173.314 NOTE 13 and 173.15 NOTE 9 | | | | | | | | | | |
| * | Distillate (petroleum or coal tar) | Flammable liquid | UN1268 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| E | Disulfoton (*RQ-1/0.454*) | Poison B | NA2783 | Poison | 173.364 | 173.365 | Forbidden | 1 quart | 2 | 2 | |
| E | Diuron (*RQ-100/45.4*) | ORM-E | NA2767 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Divinyl ether | Flammable liquid | UN1167 | Flammable liquid | None | 173.119 | Forbidden | 10 gallons | 1,3 | 5 | |
| | Dodecyl trichlorosilane | Corrosive material | UN1771 | Corrosive | None | 173.280 | Forbidden | 10 gallons | 1 | 1 | Keep dry |
| E | Dodecylbenzenesulfonic acid (*RQ-1000/454*) | ORM-E | NA2584 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| * | Dressing, leather | Combustible liquid | NA1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Dressing, leather | Flammable liquid | NA1993 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | *Drier. See* Paint drier, liquid | | | | | | | | | | |
| | Drill cartridge | | | | 173.55 | | | | | | |
| * | Drugs, n.o.s. | Combustible liquid | NA1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Drugs, n.o.s. | Flammable liquid | NA1993 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Drugs, n.o.s. | Flammable solid | NA1325 | Flammable solid | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| * | Drugs, n.o.s. | Oxidizer | UN1479 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| * | Drugs, n.o.s. liquid | Corrosive material | UN1760 | Corrosive | 173.244 | 173.245 | 1 quart | 1 quart | 1,2 | 1,2 | |
| * | Drugs, n.o.s. liquid | Poison B | UN2810 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,3 | 1 | |
| * | Drugs, n.o.s. solid | Corrosive material | UN1759 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry |
| * | Drugs, n.o.s. solid | Poison B | UN2811 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,3 | 1,3 | |
| | *Drums, empty, must be classed for the hazardous material previously contained in drum. See 173.29* | | | | | | | | | | |
| | Dry ice. *See* Carbon dioxide, solid | | UN1845 | | | | | | | | |
| | Dusts, by-product, poisonous. *See* arsenical dust | | | | | | | | | | |

## §172.101 Hazardous Materials Table (cont'd)

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| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| * | Dye intermediate, liquid | Corrosive material | UN2801 | Corrosive | 173.244 | 173.245 173.249a | 1 quart | 10 gallons | 1,2 | 1,2 | Stow away from foodstuffs and living quarters |
| | *Dynamite. See* High explosive | | | | | | | | | | |
| E | EDTA. *See* Ethylenediaminetetraacetic acid | | | | | | | | | | |
| | Electric blasting caps. *See* Blasting caps, electric | | | | | | | | | | |
| | Electric squib | Class C explosive | UN0206 | Explosive C | None | 173.106 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Electric storage battery, wet. *See* Battery, electric storage, wet | | NA2794 | | | | | | | | |
| | Electrolyte (*acid*), battery fluid (*not over 47% acid*) | Corrosive material | UN2796 | Corrosive | 173.244 | 173.257 | 1 quart | 5 gallons | 1,2 | 1,2 | Glass carboys in hampers not permitted under deck |
| | Electrolyte (*acid*), *or* alkaline (*corrosive*) battery fluid packed with dry-storage battery | Corrosive material | NA2797 | Corrosive | None | 173.258 | Forbidden | 5 pints | 1,2 | 1,2 | |
| | Electrolyte (*acid*), or alkaline (*corrosive*) battery fluid packed with battery charger, radio current supply device, or electronic equipment and actuating device. | Corrosive material | NA2797 | Corrosive | None | 173.259 | Forbidden | 5 pints | 1,2 | 1,2 | |
| | Empty cartridge bag with black powder igniter | Class C explosive | NA0325 | Explosive C | None | 173.106 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Empty cartridge case, primed | Class C explosive | UN0055 | Explosive C | None | 173.107 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| * | Enamel. *See* Paint, enamel, lacquer, etc. | | UN1263 | | | | | | | | |
| E | Endosulfan (*RQ-1/0.454*) | Poison B | NA2761 | Poison | 173.364 | 173.365 | 1 pound | 10 pounds | 1,2 | 1,2 | If stowed under deck, must be stowed in a recoverable location. |
| E | Endrin (*RQ-1/0.454*) | Poison B | NA2761 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | If stowed under deck, must be stowed in a recoverable location. |
| | Engine, internal combustion | | | | 173.120 | | | | 1,2 | 1,2 | Not permitted in unventilated containers |
| | Engine starting fluid | Flammable gas | UN1960 | Flammable gas | None | 173.304 | Forbidden | 60 pounds | 1,2 | 5 | |
| E | Epichlorohydrin (*RQ-1000/454*) | Flammable liquid | UN2023 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 2 | 2 | |
| * | Eradicator, paint *or* grease, liquid | Flammable liquid | UN1850 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Etching acid, liquid, n.o.s. | Corrosive material | NA1790 | Corrosive | None | 173.299 | Forbidden | 10 pounds | 1 | 5 | |
| | Ethane | Flammable gas | UN1035 | Flammable gas | 173.306 | 173.304 | Forbidden | 300 pounds | 1,2 | 4 | |
| | Ether (*ethyl*) | Flammable liquid | UN1155 | Flammable liquid | None | 173.119 | Forbidden | 10 gallons | 1,3 | 5 | |
| | Ether, Ethyl. *See* Ether | | | | | | | | | | |
| E | Ethion (*RQ-10/4.54*) | Poison B | NA2783 | Poison | 173.364 | 173.365 | Forbidden | 1 quart | 2 | 2 | |
| | Ethyl acetate | Flammable liquid | UN1173 | Flammable liquid | 173.118 | 173.419 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Ethyl acrylate, inhibited | Flammable liquid | UN1917 | Flammable liquid | 173,118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Ethyl alcohol. *See* Alcohol, n.o.s. | | UN1170 | | | | | | | | |
| | Ethyl aldehyde. *See* Acetaldehyde | | UN1089 | | | | | | | | |
| E | Ethyl benzene (*RQ-1000/454*) | Flammable liquid | UN1175 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Ethyl borate | Flammable liquid | UN1176 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | Keep dry |
| | Ethyl butyl acetate | Combustible liquid | UN1177 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Ethyl butyl ether | Flammable liquid | UN1179 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Ethyl butyraldehyde | Flammable liquid | UN1178 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Ethyl butyrate | Flammable liquid | UN1180 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Ethyl chloride | Flammable liquid | UN1037 | Flammable liquid | None | 173.123 | Forbidden | 173.123 | 1,2 | 1 | Segregation same as for flammable gases |
| | Ethyl chloroacetate | Combustible liquid | UN1181 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Ethyl chloroformate (*chlorocarbonate*) | Flammable liquid | UN1182 | Flammable liquid and Poison | None | 173.288 | Forbidden | 5 pints | 1,2 | 1 | |
| | Ethyl chlorothioformate | Corrosive material | UN2826 | Corrosive | 173.244 | 173.245 173.245a | 1 quart | 1 quart | 1,2 | 1 | |
| | Ethyl crotonate | Flammable liquid | UN1862 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Ethyl dichlorosilane | Flammable liquid | UN1892 | Flammable liquid | None | 173.135 | Forbidden | 5 pints | 1,2 | 1 | |
| | *Ethyl ether. See* Ether | | UN1155 | | | | | | | | |
| | Ethyl formate | Flammable liquid | UN1190 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | |
| | Ethyl lactate | Combustible liquid | UN1192 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Ethyl mercaptan | Flammable liquid | UN2363 | Flammable liquid | None | 173.141 | Forbidden | 10 gallons | 1,2 | 1 | |
| | Ethyl methyl ether | Flammable liquid | UN1039 | Flammable liquid | None | 173.119 | Forbidden | 10 gallons | 1,3 | 1 | Segregation same as for flammable gases |
| | Ethyl methyl ketone | Flammable liquid | UN1193 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Ethyl nitrate (*nitric ether*) | Flammable liquid | NA1993 | Flammable liquid | 173.118 | 173.119 | Forbidden | Forbidden | 1,2 | 1 | |
| | Ethyl nitrite (nitrous ether) | Flammable liquid | UN1194 | Flammable liquid | None | 173.119 | Forbidden | Forbidden | 1,3 | 5 | |
| | Ethyl phenyl dichlorosilane | Corrosive material | UN2435 | Corrosive | None | 173.280 | Forbidden | 10 gallons | 1 | 5 | |

16 **§172.101 Hazardous Materials Table (cont'd)**

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | Ethyl phosphonothioic dichloride, anhydrous | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 173.245a | 1 quart | 1 quart | 1 | 4 | |
| | Ethyl phosphonous dichloride, anhydrous | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 173.245a | 1 quart | 1 quart | 1 | 4 | |
| | Ethyl phosphorodichloridate | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 173.245a | 1 quart | 1 quart | 1 | 4 | |
| | Ethyl propionate | Flammable liquid | UN1195 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Ethyl silicate (*tetra ethyl ortho silicate*) | Combustible liquid | UN1292 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Ethyl trichlorosilane | Flammable liquid | UN1196 | Flammable liquid | None | 173.135 | Forbidden | 5 pints | 1,2 | 1 | |
| | Ethylene | Flammable gas | UN1962 | Flammable gas | 173.306 | 173.304 | Forbidden | 300 pounds | 1,2 | 4 | |
| | Ethylene chlorohydrin | Poison B | UN1135 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1 | Segregation same as for flammable liquids |
| EAW | Ethylene dibromide (1,2-dibromethane) (*RQ-1000/454*) | ORM-A | UN1605 | None | 173.505 | 173.620 | 1 quart | 55 gallons | 1,2 | 1,2 | Stow away from living quarters |
| E | Ethylene dichloride (*RQ-5000/2270*) | Flammable liquid | UN1184 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Ethylene glycol diethyl ether (*diethyl 'Cellosolve'*) | Combustible liquid | UN1153 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Ethylene glycol monoethyl ether (*'Cellosolve'*) | Combustible liquid | UN1171 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Ethylene glycol monoethyl ether acetate (*'Cellosolve acetate'*) | Combustible liquid | UN1172 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Ethylene glycol monomethyl ether (*methyl 'Cellosolve'*) | Combustible liquid | UN1188 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Ethylene glycol monomethyl ether acetate (*methyl 'Cellosolve acetate'*) | Combustible liquid | UN1189 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Ethylene imine, inhibited | Flammable liquid | UN1185 | Flammable liquid and Poison | None | 173.139 | Forbidden | 5 pints | 1,2 | 1 | |
| | Ethylene oxide | Flammable liquid | UN1040 | Flammable liquid | None | 173.124 | Forbidden | 173.124 | 1,2 | 1 | Segregation same as for flammable gases |
| E | Ethylenediamine (*RQ-1000/454*) | Flammable liquid | UN1604 | Flammable liquid | 173.118 | 173.119 | Forbidden | 1 quart | 2 | 2 | |
| E | Ethylenediaminetetraacetic acid (*RQ-5000/2270*) | ORM-E | NA9117 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Ethylhexaldehyde | Combustible liquid | UN1191 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Etiologic agent, n.o.s. | Etiologic agent | UN2814 | Etiologic agent | 173.386 | 173.387 | 173.386 | 4 liters | | | Not permitted except under specific conditions approved by the Department |
| W | Excelsior (shredded wood) *when dry, clear, and free from oil* | ORM-C | | None | 173.505 | 173.980 | | | 1,3 | 1,3 | Stow away from organic, corrosive, or oxidizing materials |
| W | Exothermic ferrochrome | ORM-C | | None | 173.505 | 173.985 | | | 1 | 1 | |
| W | Exothermic ferromanganese. *See* Exothermic ferrochrome | | | | | | | | | | |
| W | Exothermic silicon chrome. *See* Exothermic ferrochrome | | | | | | | | | | |
| | Explosive auto alarm | Class C explosive | UN0001 | Explosive C | None | 173.111 | 50 pounds | 150 pounds | 1,2 | 1,2 | |
| | Explosive bomb | Class A explosive | | Explosive A | None | 173.56 | Forbidden | Forbidden | 1,2 | 5 | Magazine stowage authorized. No other cargo may be stowed in the same hold with these items |
| | Explosive cable cutter | Class C explosive | UN0070 | Explosive C | None | 173.102 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Explosive mine | Class A explosive | | Explosive A | None | 173.56 | Forbidden | Forbidden | 1,2 | 5 | Magazine stowage authorized. No other cargo may be stowed in the same hold with these items |
| | *Explosive, new approval, and evaluation* See 173.86 | | | | | | | | | | |
| | Explosive power device, Class B | Class B explosive | | Explosive B | None | 173.94 | Forbidden | 150 pounds | 1,2 | 5 | |
| | Explosive power device, Class C | Class C explosive | NA0323 | Explosive C | None | 173.102 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Explosive projectile | Class A explosive | | Explosive A | None | 173.56 | Forbidden | Forbidden | 1,2 | 5 | Magazine stowage authorized. No other cargo may be stowed in the same hold with this material |
| | Explosive release device | Class C explosive | UN0173 | Explosive C | None | 173.102 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Explosive rivet | Class C explosive | UN0174 | Explosive C | None | 173.100 | 50 pounds | 150 pounds | 1,2 | 1,2 | |
| | *Explosive, sample for laboratory examination* | | | | 173.86 | | Forbidden | 173.86 | | | |
| | Explosive torpedo | Class A explosive | | Explosive A | None | 173.56 | Forbidden | Forbidden | 1,2 | 5 | Magazine stowage authorized. No other cargo may be stowed in the same hold with this material |
| * | Extract, liquid, flavoring | Flammable liquid | UN1197 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | *Fabric with animal or vegetable oil. See* Fibers or fabric containing not more than 5% animal or vegetable fat | | | | | | | | | | |
| AW | Feed, wet, mixed | ORM-C | | None | 173.505 | 173.990 | Forbidden | Forbidden | 3 | 3 | Stow in cool, dry, well ventilated compartment. Do not stow bags over ten tiers high without flooring off. Do not overstow |
| W | Felt, waste. *See* Cotton waste | | | | | | | | | | |
| | Felt, waste, wet. *See* Waste wool, wet | | | | | | | | | | |
| E | Ferric ammonium citrate (*RQ-1000/454*) | ORM-E | NA9118 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Ferric ammonium oxalate (*RQ-1000/454*) | ORM-E | NA9119 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Ferric arsenate, solid | Poison B | UN1606 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Ferric arsenite, solid | Poison B | UN1607 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| EA | Ferric chloride, solid, *anhydrous* (*RQ-1000/454*) | ORM-B | UN1773 | None | 173.505 | 173.510 | 25 pounds | 100 pounds | | | |
| *E | Ferric chloride solution (*RQ-1000/454*) | Corrosive material | UN2582 | Corrosive | 173.244 | 173.245 173.245a | 1 quart | 10 quarts | 1,2 | 1,2 | |

## §172.101 Hazardous Materials Table (cont'd)



| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| E | Ferric fluoride (*RQ-100/45.4*) | ORM-E | NA9120 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Ferric nitrate (*RQ-1000/454*) | Oxidizer | UN1466 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 2 | 2 | |
| E | Ferric sulfate (*RQ-1000/454*) | ORM-E | NA9121 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| W | Ferrophosphorus | ORM-A | | None | 173.505 | 173.635 | | | 1,2 | 1,2 | Keep dry. Stow away from living quarters |
| AW | Ferrosilicon, *containing 30% or more but not more than 70% silicon* | ORM-A | UN1408 | None | 173.505 | 173.510 173.645 | Forbidden | 25 pounds | 1,2 | 1,2 | Keep dry. Stow away from living quarters. Segregation same as for flammable solids labeled Dangerous When Wet |
| E | Ferrous ammonium sulfate (*RQ-1000/454*) | ORM-E | NA9122 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Ferrous arsenate (*iron arsenate*), solid | Poison B | UN1608 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| EA | Ferrous chloride, solid (*RQ-100/45.4*) | ORM-B | NA1759 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Ferrous chloride, solution (*RQ-100/45.4*) | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 | 1 quart | 5 gallons | 2 | 2 | |
| E | Ferrous sulfate (*RQ-1000/454*) | ORM-E | NA9125 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Fertilizer ammoniating solution containing free ammonia (*more than 25.3 p.s.i.g.*) | Nonflammable gas | UN1043 | Nonflammable gas | 173.306 | 173.304 173.314 | Forbidden | 300 pounds | 1,2 | 4 | |
| | Fertilizer, tankage. *See* Garbage, tankage | | | | | | | | | | |
| | Fibers, burnt | Flammable solid | NA1372 | Flammable solid | None | 173.169 | Forbidden | Forbidden | 1,2 | 1,2 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| W | Fibers (*jute, hemp, flax, sisal, coir, kapok, and similar vegetable fibers*) | ORM-C | NA1372 | None | 173.505 | 173.965 | | | 1,2 | 1,2 | Stow away from animal or vegetable oils. Segregation same as for flammable solids |
| | Fibers *or* fabric, containing not more than 5% animal *or* vegetable oil | Flammable solid | NA1373 | Flammable solid | None | 173.170 | Forbidden | Forbidden | 1,2 | 1,2 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| | Film (nitrocellulose) | Flammable solid | NA1324 | Flammable solid | None | 173.177 | 50 pounds | 200 pounds | 1,3 | 1,3 | Stow away from other flammable cargo or substances |
| | *Film, photographic, (including scrap film), safety, nonflammable, or slow burning.* Not subject to requirements of this subchapter | | NA2002 | | | | | | | | |
| * | Fire extinguisher | Nonflammable gas | UN1044 | Nonflammable gas | 173.306 | | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| | *Fire extinguisher charge containing not more than 50 grains of propellant explosive per unit.* Not subject to requirements of this subchapter. | | | | | | | | | | |
| | *Fire extinguisher charge containing sulfuric acid* | Corrosive material | UN1774 | Corrosive | 173.261 | | 1 quart | 1 gallon | 1,2 | 1,2 | |
| | *Firecracker salute.* *See* Fireworks, common *or* special | | | | | | | | | | |
| | *Firecracker.* *See* Fireworks, common *or* special | | | | | | | | | | |
| | Fireworks, common | Class C explosive | NA0335 | Explosive C | None | 173.100 173.108 | 50 pounds | 200 pounds | 1,3 | 1,3 | Passenger vessels in metal lockers only |
| | *Fireworks, exhibition display piece.* *See* Fireworks, special | | | | | | | | | | |
| | Fireworks, special | Class B explosive | | Explosive B | None | 173.88 173.91 | Forbidden | 200 pounds | 3 | 3 | Passenger vessels in metal lockers only. Toy torpedoes must not be packed with other special fireworks |
| W | Fish meal *or* fish scrap containing 6% to 12% water | ORM-C | NA1374 | None | 173.505 | 173.995 | | | 1,2 | 1,2 | Segregation same as for flammable solids. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides. *Use double strip stowage* for cargo 6-12 percent moisture containing not more than 12 percent fat. *Use single strip stowage* for cargo 6-12 percent moisture containing 12-15 percent fat. |
| | Fish meal *or* fish scrap containing less than 6% or more than 12% water | Flammable solid | NA1374 | Flammable solid | None | 173.171 | Forbidden | Forbidden | 1,2 | 1,2 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| | Fissile radioactive material. *See* Radioactive material, fissile | | UN2918 | | | | | | | | |
| * | Flame retardant compound liquid | Corrosive material | NA1760 | Corrosive | 173.244 | 173.291 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Flammable Gas n.o.s. *See* Compressed gas, n.o.s. | | UN1954 | | | | | | | | |
| | Flammable liquid, n.o.s. | Flammable liquid | UN1993 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Flammable solid, n.o.s. | Flammable solid | UN1325 | Flammable solid | 173.153 | 173.154 | 25 pounds | 25 pounds | 1,2 | 1,2 | |
| | *Flare, airplane.* *See* Fireworks, special | | | | | | | | | | |
| | *Flare.* *See* Fireworks, common | | | | | | | | | | |
| | *Flash cartridge.* *See* Fireworks, special *or* Low explosives | | | | | | | | | | |
| | *Flash cracker.* *See* Fireworks, common *or* special | | | | | | | | | | |
| | *Flash powder.* *See* Fireworks, special *or* Low explosives | | | | | | | | | | |
| | *Flax.* *See* Fibers | | | | | | | | | | |
| | Flexible linear shaped charge, metal clad | Class C explosive | UN0237 | Explosive C | None | 173.104 | 50 pounds | 300 pounds | 1,3 | 1,3 | |
| | Flowers of sulfur. *See* Sulfur | | NA1350 | | | | | | | | |
| | Flue dust, poisonous | Poison B | UN1562 | Poison | 173.364 | 173.368 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Fluoboric acid | Corrosive material | UN1775 | Corrosive | 173.244 | 173.283 | 1 quart | 1 gallon | 1,2 | 1,2 | |
| | Fluoric acid. *See* Hydrofluoric acid | | UN1790 | | | | | | | | |
| | Fluorine | Nonflammable gas | UN1045 | Poison and Oxidizer | None | 173.302 | Forbidden | Forbidden | 1 | 5 | Stow in well ventilated space away from organic materials |
| | Fluorophosphoric acid, anhydrous. *See* Monofluorophosphoric acid, anhydrous | | UN1776 | | | | | | | | |
| | Fluorosilicic acid. *See* Hydrofluosilicic acid | | UN1778 | | | | | | | | |
| | Fluorosulfonic acid *or* Fluosulfonic acid | Corrosive material | UN1777 | Corrosive | None | 173.274 | Forbidden | 1 gallon | 1 | 5 | Keep dry |
| EAW | Formaldehyde, *or* formalin solution (*in containers of 110 gallons or less*) (*RQ-1000/454*) | ORM-A | NA2209 | None | 173.505 | 173.510 | 10 gallons | 55 gallons | 1,2 | 4 | |

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## §172.101 Hazardous Materials Table (cont'd)

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| E | Formaldehyde, *or* formalin solution (*in containers over 110 gallons*) (*RQ-1000/454*) | Combustible liquid | NA2209 | None | 173.118a | None | 10 gallons | 55 gallons | 1,2 | 1,2 | |
| | Formalin. *See* Formaldehyde solution | | UN2209 | | | | | | | | |
| E | Formic acid (*RQ-5000/2270*) | Corrosive material | UN1779 | Corrosive | 173.244 | 173.245 173.289 | 1 quart | 5 gallons | 1,2 | 1,2 | Glass carboys in hampers not permitted under deck |
| *E | Formic acid solution (*RQ-5000/2270*) | Corrosive material | NA1779 | Corrosive | 173.244 | 173.245 173.289 | 1 quart | 5 gallons | 1,2 | 1,2 | |
| * | Fuel, aviation, turbine engine | Flammable liquid | UN1863 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Fuel oil | Combustible liquid | NA1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Fuel oil, Diesel. *See* Fuel oil | | NA1993 | | | | | | | | |
| | Fuel oil, No. 1, 2, 4, 5 *or* 6 | Combustible liquid | NA1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | *Fulminate of mercury, dry* | Forbidden | | | | | | | | | |
| | *Fulminate of mercury, wet.* *See* Initiating explosive | | | | | | | | | | |
| E | Fumaric acid (*RQ-5000/2270*) | ORM-E | NA9126 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Fumaryl chloride | Corrosive material | UN1780 | Corrosive | 173.244 | 173.245 | 1 quart | 1 quart | 1 | 1 | Glass carboys not permitted |
| * | *Fumigant* | | | | | 173.152 | | | | | |
| *E | Furfural (*RQ-1000/454*) | Combustible liquid | UN1199 | None | 173.118a | None | No limit | No limit | 1,2 | 1 | |
| | Fuse igniter | Class C explosive | NA0325 | Explosive C | None | 173.106 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Fuse, instantaneous | Class C explosive | UN0101 | Explosive C | 173.100 | | 50 pounds | 150 pounds | 1,2 | 1,2 | |
| | Fuse lighter | Class C explosive | UN0131 | Explosive C | None | 173.106 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Fuse, mild detonating, metal clad | Class C explosive | NA0104 | Explosive C | None | 173.104 | 50 pounds | 300 pounds | 1,2 | 1,2 | |
| | Fuse, safety | Class C explosive | UN0105 | Explosive C | 173.100 | | 50 pounds | 300 pounds | 1,2 | 1,2 | |
| | Fusee (*railway or highway*) | Flammable solid | NA2254 | Flammable solid | None | 173.154a | 50 pounds | 200 pounds | 1,3 | 1,3 | |
| | Fusel oil | Combustible liquid | UN1201 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Fuze, combination | Class C explosive | NA0257 | Explosive C | None | 173.105 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Fuze, detonating | Class A explosive | | Explosive A | None | 173.69 | Forbidden | Forbidden | 6 | 5 | |
| | Fuze, detonating, Class C explosive | Class C explosive | NA0257 | Explosive C | None | 173.113 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Fuze, detonating, radioactive | Class A explosive | | Explosive A | None | 173.69 | Forbidden | Forbidden | 6 | 5 | |
| | Fuze, percussion | Class C explosive | NA0320 | Explosive C | None | 173.105 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Fuze, time | Class C explosive | NA0257 | Explosive C | None | 173.105 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Fuze, tracer | Class C explosive | NA0306 | Explosive C | None | 173.105 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Gallium metal, liquid | ORM-B | NA2803 | None | None | 173.861 | Forbidden | Forbidden | 1 | 5 | None |
| | Gallium metal, solid | ORM-B | NA2803 | None | None | 173.862 | 40 pounds | 40 pounds | 1,3 | 1 | Shade from radiant heat |
| W | Garbage tankage *containing 8% or more water* | ORM-C | | None | 173.505 | 173.1000 | | | 1,2 | 1,2 | |
| | Garbage tankage, *containing less than 8% water* | Flammable solid | NA1325 | Flammable solid | None | 173.209 | Forbidden | Forbidden | 1 | 1 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| | Gas cylinder, empty. *See* Cylinder, empty | | | | | | | | | | |
| * | Gas drips, hydrocarbon | Combustible liquid | UN1864 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Gas drips, hydrocarbon | Flammable liquid | UN1864 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Gas identification set | Poison A | NA9035 | Poison gas | None | 173.331 | Forbidden | Forbidden | 1 | 5 | |
| * | Gas identification set | Irritating material | NA9035 | Irritant | None | 173.331 | Forbidden | Forbidden | 1 | 5 | |
| | *Gas mine.* *See* Explosive mine | | | | | | | | | | |
| | Gas oil. *See* Fuel oil | | UN1202 | | | | | | | | |
| | Gasoline (*including casing-head and natural*) | Flammable liquid | NA1257 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 4 | |
| | *Gelatine Dynamite.* *See* High explosive | | | | | | | | | | |
| | Germane | Poison A | UN2192 | Poison gas and Flammable gas | None | 173.328 | Forbidden | Forbidden | 1 | 5 | |
| | Grenade, empty, primed | Class C explosive | NA0110 | Explosive C | None | 173.107 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Grenade, hand *or* rifle, explosive (*with or without gas, smoke, or incendiary material*) | Class A explosive | | Explosive A | None | 173.56 | Forbidden | Forbidden | 1,2 | 5 | No other cargo may be stowed in the same hold with these items |
| | Grenade, tear gas | Irritating material | NA1700 | Irritant | None | 173.385 | Forbidden | 75 pounds | 1,2 | 1 | |
| | *Grenade without bursting charge: With incendiary material* (Special fireworks) | Class B explosive | | Explosive B | 173.91 | | Forbidden | Forbidden | 3 | 3 | Passenger vessels in metal lockers only |
| | *Grenade without bursting charge: With smoke charge* (Smoke grenade) | Class C explosive | NA0303 | Explosive C | 173.108 | | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | *Grenade without bursting charge: With Poison A gas charge* | Poison A | | Poison gas | 173.330 | | Forbidden | Forbidden | | | *See* correct shipping name of applicable Poison A material for stowage, special handling, and special segregation requirements |
| | *Grenade without bursting charge: With Poison B charge* | Poison B | | Poison | 173.350 | | Forbidden | Forbidden | | | *See* Correct shipping name of applicable Poison B material for stowage, special handling, and special segregation requirements |

## §172.101 Hazardous Materials Table (cont'd)



| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | Guanidine nitrate | Oxidizer | UN1467 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | Separate from nitro-compounds, chlorates, and acids |
| | *Guanyl nitrosamino guanyl tetrazene. See* Initiating explosive | | | | | | | | | | |
| | *Guanyl nitrosamino guanylidene hydrazine. See* Initiating explosive | | | | | | | | | | |
| | *Guided missile with warhead. See* Rocket ammunition with explosive, illuminating, gas, incendiary, *or* smoke projectile | | | | | | | | | | |
| | *Guided missile, without warhead. See* Rocket motor, Class A explosive *or* Rocket motor, Class B explosive | | | | | | | | | | |
| | *Guncotton. See* High explosive | | | | | | | | | | |
| E | Guthion (*RQ-1/0.454*) | Poison B | NA2783 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 2 | 2 | |
| | Hafnium metal, dry (*See Note 3, Sec. 173.214*) | Flammable solid | UN2545 | Flammable solid | None | 173.214 | Forbidden | 75 pounds | 1 | 5 | |
| | Hafnium metal, wet | Flammable solid | UN1326 | Flammable solid | None | 173.214 | Forbidden | 150 pounds | 1,2 | 5 | |
| | Hair, wet | Flammable solid | NA1325 | Flammable solid | None | 173.172 | Forbidden | Forbidden | 1,2 | 5 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| | Hand signal device | Class C explosive | NA0191 | Explosive C | None | 173.108 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| W | Hay | ORM-C | UN1327 | None | 173.505 | 173.1005 | | | 1,2 | 1,2 | Segregation same as for flammable solids. Stow away from animal or vegetable oils |
| W | Hay or straw (*loose, wet, or damp*) | | UN1327 | | | | | | | | Forbidden for water shipment |
| | Heater for refrigerator car, liquid fuel type (*containing fuel*) | Flammable liquid | | Flammable liquid | 173.146 | | Forbidden | Forbidden | 1,2 | 1 | |
| * | Helium | Nonflammable gas | UN1046 | Nonflammable gas | 173.306 | 173.302 173.314 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| * | Helium-oxygen mixture | Nonflammable gas | NA1980 | Nonflammable gas | 173.306 | 173.302 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| E | Heptachlor (*RQ-1/0.454*) | Poison B | NA2761 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | If stowed under deck, must be stowed in a recoverable location. |
| | Heptane | Flammable liquid | UN1206 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| W | *Hessian. See* Burlap cloth | | | | | | | | | | |
| E | Hexachlorocyclopentadiene (*RQ-1/0.454*) | Corrosive material | NA2646 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 2 | 2 | |
| W | Hexachloroethane | ORM-A | NA9037 | None | 173.505 | 173.650 | | | 1,2 | 1,2 | |
| | Hexadecyltrichlorosilane | Corrosive material | UN1781 | Corrosive | None | 173.280 | Forbidden | 10 gallons | 1 | 1 | Keep dry |
| | Hexadiene | Flammable liquid | UN2458 | Flammable liquid | None | 173.119 | Forbidden | 10 gallons | 1,2 | 5 | |
| | Hexaethyl tetraphosphate and compressed gas mixture | Poison A | UN1612 | Poison gas | None | 173.334 | Forbidden | Forbidden | 1 | 5 | Shade from radiant heat |
| | Hexaethyl tetraphosphate, liquid | Poison B | UN1611 | Poison | None | 173.358 | Forbidden | 1 quart | 1 | 4 | |
| | Hexaethyl tetraphosphate mixture, dry (*containing more than 2% hexaethyl tetraphosphate*) | Poison B | NA2783 | Poison | None | 173.377 | Forbidden | 200 pounds | 1,2 | 5 | |
| * | Hexaethyl tetraphosphate mixture, dry (*containing not more than 2% hexaethyl tetraphosphate*) | Poison B | NA2783 | Poison | 173.377 | 173.377 | 50 pounds | 200 pounds | 1,2 | 4 | |
| | Hexaethyl tetraphosphate mixture, liquid (*containing more than 25% hexaethyl tetraphosphate*) | Poison B | NA2783 | Poison | None | 173.359 | Forbidden | 1 quart | 1,2 | 5 | |
| * | Hexaethyl tetraphosphate mixture, liquid (*containing not more than 25% hexaethyl tetraphophate*) | Poison B | UN2783 | Poison | 173.359 | 173.359 | 1 quart | 1 quart | 1,2 | 4 | |
| | Hexafluorophosphoric acid | Corrosive material | UN1782 | Corrosive | None | 173.275 | Forbidden | 1 gallon | 1,2 | 1,2 | |
| | Hexafluoropropylene | Nonflammable gas | UN1858 | Nonflammable gas | 173.306 | 173.304 173.314 173.315 | 150 pounds | 300 pounds | 1 | 4 | |
| | Hexafluoropropylene oxide | Nonflammable gas | NA1956 | Nonflammable gas | 173.306 | 173.304 173.314 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| * | Hexaldehyde | Flammable liquid | UN1207 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Hexamethylenediamine, solid | Corrosive material | UN2280 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| * | Hexamethylenediamine, solution | Corrosive material | UN1783 | Corrosive | 173.244 | 173.292 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Hexamethyleneimine | Corrosive material | UN2493 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Hexane | Flammable liquid | UN1208 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | |
| | Hexanoic acid | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Hexyltrichlorosilane | Corrosive material | UN1784 | Corrosive | None | 173.280 | Forbidden | 10 gallons | 1 | 1 | Keep dry |
| | High explosive | Class A explosive | | Explosive A | 173.655 | 173.61 to 173.87 | Forbidden | Forbidden | 6 | 5 | |
| | High explosive, liquid | Class A explosive | | Explosive A | None | 173.62 | Forbidden | Forbidden | 6 | 5 | |
| * | Hydraulic accumulator. *See* Accumulator, pressurized | | NA1956 | | | | | | | | |
| | Hydrazine, anhydrous | Flammable liquid | UN2029 | Flammable liquid and Poison | None | 173.276 | Forbidden | 5 pints | 1 | 5 | Segregation same as for corrosives |
| * | Hydrazine, aqueous solution | Corrosive material | UN2030 | Corrosive | None | 173.276 | Forbidden | 5 pints | 1 | 5 | |
| * | Hydriodic acid | Corrosive material | UN1787 | Corrosive | 173.244 | 173.245 | 1 quart | 1 gallon | 1 | 1 | Glass carboys not permitted on passenger vessel |
| | Hydrobromic acid, anhydrous. *See* Hydrogen bromide | | UN1048 | | | | | | | | |

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## §172.101 Hazardous Materials Table (cont'd)

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | Hydrobromic acid, *more than 49% strength* | Corrosive material | UN1788 | Corrosive | None | 173.262 | Forbidden | Forbidden | 1 | 1 | Glass carboys not permitted on passenger vessel |
| * | Hydrobromic acid not more than 49% strength | Corrosive material | UN1788 | Corrosive | 173.244 | 173.262 | 1 quart | 1 gallon | 1 | 1 | Glass carboys not permitted on passenger vessel |
| | Hydrocarbon gas, liquefied | Flammable gas | UN1965 | Flammable gas | 173.306 | 173.304 173.314 | Forbidden | 300 pounds | 1,2 | 1 | |
| * | Hydrocarbon gas, nonliquefied | Flammable gas | UN1964 | Flammable gas | 173.306 | 173.302 | Forbidden | 300 pounds | 1,2 | 1 | |
| E | Hydrochloric acid, anhydrous. *See* Hydrogen chloride | | UN1050 | | | | | | | | |
| *E | Hydrochloric acid mixture (*RQ-5000/2270*) | Corrosive material | NA1789 | Corrosive | 173.244 | 173.263 | 1 quart | 1 gallon | 1 | 1 | Glass carboys not permitted on passenger vessel |
| *E | Hydrochloric acid solution, inhibited (*RQ-5000/2270*) | Corrosive material | NA1789 | Corrosive | 173.244 | 173.263 | 1 quart | 1 gallon | 1 | 1 | Glass carboys not permitted on passenger vessel |
| *E | Hydrochloric (*muriatic*) acid (*RQ-5000/2270*) | Corrosive material | UN1789 | Corrosive | 173.244 | 173.263 | 1 quart | 1 gallon | 1 | 1 | Glass carboys not permitted on passenger vessel |
| E | Hydrocyanic acid, liquefied (*RQ-10/4.54*) | Poison A | UN1051 | Flammable gas and Poison gas | None | 173.332 | Forbidden | Forbidden | 1 | 5 | |
| E | Hydrocyanic acid (*prussic*), solution (*5% or more hydrocyanic acid*) (*RQ-10/4.54*) | Poison A | NA1613 | Flammable gas and Poison gas | None | 173.332 | Forbidden | Forbidden | 1 | 5 | Shade from radiant heat. Aqueous solutions containing more than 20 percent hydrogen cyanide are not permitted in transportation by water |
| | Hydrocyanic acid (*prussic*), unstabilized | Forbidden | | | | | | | | | |
| E | Hydrocyanic acid solution, less than 5% hydrocyanic acid (*RQ-10/4.54*) | Poison B | NA1613 | Poison | None | 173.351 | Forbidden | 25 pounds | 01 | 5 | Shade from radiant heat |
| | Hydrofluoric acid, anhydrous. *See* Hydrogen fluoride | | UN1052 | | | | | | | | |
| *E | Hydrofluoric acid solution (*RQ-5000/2270*) | Corrosive material | UN1790 | Corrosive | 173.244 | 173.264 | 1 quart | 1 gallon | 1 | 4 | |
| *E | Hydrofluoric and sulfuric acids, mixture (*RQ-5000/2270*) | Corrosive material | UN1786 | Corrosive | None | 173.290 | Forbidden | 1 gallon | 1 | 5 | |
| | Hydrofluoroboric acid. *See* Fluoboric acid | | UN1775 | | | | | | | | |
| | Hydrofluorosilicic acid | Corrosive material | UN1778 | Corrosive | None | 173.265 | 1 quart | 1 gallon | 1,2 | 1,2 | |
| | Hydrogen | Flammable gas | UN1049 | Flammable gas | 173.306 | 173.302 173.314 | Forbidden | 300 pounds | 1,2 | 54 | |
| | Hydrogen bromide | Nonflammable gas | UN1048 | Nonflammable gas | 173.306 | 173.304 | Forbidden | 300 pounds | 1 | 4 | |
| | Hydrogen chloride | Nonflammable gas | UN1050 | Nonflammable gas | 173.306 | 173.304 | Forbidden | 300 pounds | 1 | 4 | |
| | Hydrogen fluoride | Corrosive material | NA1790 | Corrosive | None | 173.264 | Forbidden | 110 pounds | 1 | 5 | Segregation same as for nonflammable gases |
| | Hydrogen iodide solution. *See* Hydriodic acid | | UN1787 | | | | | | | | |
| | Hydrogen, liquefied | Flammable gas | UN1966 | Flammable gas | None | 173.316 | Forbidden | Forbidden | | | Forbidden |
| | Hydrogen peroxide solution (*8% to 40% peroxide*) | Oxidizer | NA2014 | Oxidizer | 173.244 | 173.266 | 1 quart | 1 gallon | 1,2 | 1 | Shade from radiant heat. Separate from permanganates. Keep away from powdered metals |
| | Hydrogen peroxide solution (40% to 52% peroxide) | Oxidizer | NA2014 | Oxidizer | 173.244 | 173.266 | Forbidden | Forbidden | 1 | 4 | Shade from radiant heat. Separate from permanganates. Keep away from powdered metals |
| | Hydrogen peroxide solution (over 52% peroxide) | Oxidizer | NA2015 | Oxidizer | None | 173.266 | Forbidden | Forbidden | 1 | 5 | Shade from radiant heat. Separate from permanganates. Keep away from powdered metals. Concentrations greater than 60% hydrogen peroxide not permitted on any vessel except under conditions approved by the Department |
| | Hydrogen selenide | Flammable gas | UN2202 | Flammable gas and Poison | None | 173.328 | Forbidden | Forbidden | 1 | 5 | |
| | Hydrogen sulfate. *See* Sulfuric acid | | UN1830 | | | | | | | | |
| E | Hydrogen sulfide (*RQ-100/45.4*) | Flammable gas | UN1053 | Flammable gas and Poison | None | 173.304 173.314 | Forbidden | 300 pounds | 1 | 5 | |
| | Hydrosilicofluoric acid. *See* Hydrofluorosilicic acid | | UN1778 | | | | | | | | |
| | Hypochlorite solution *containing more than 7% available chlorine by weight* | Corrosive material | NA1791 | Corrosive | 173.244 | 173.277 | 1 quart | 4 gallons | 1,2 | 1 | Glass carboys in hampers not permitted under deck |
| *A | Hypochlorite solution containing not more than 7% available chlorine *by weight* | ORM-B | NA1791 | None | 173.505 | 173.510 | No limit | No limit | | | |
| | Igniter | Class C explosive | UN0325 | Explosive C | None | 173.106 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Igniter cord | Class C explosive | UN0066 | Explosive C | None | 173.100 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Igniter fuse, metal clad | Class C explosive | NA0103 | Explosive C | None | 173.106 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| * | Igniter, jet thrust (jato) | Class A explosive | | Explosive A | None | 173.79 | Forbidden | Forbidden | 6 | 5 | |
| * | Igniter, jet thrust (jato) | Class B explosive | | Explosive B | None | 173.92 | Forbidden | 550 pounds | 1,3 | 5 | |
| * | Igniter, rocket motor | Class A explosive | | Explosive A | None | 173.79 | Forbidden | Forbidden | 6 | 5 | |
| * | Igniter, rocket motor | Class B explosive | | Explosive B | None | 173.92 | Forbidden | 550 pounds | 1,3 | 5 | |
| | *Illuminating projectile.* *See* Fireworks, special | | | | | | | | | | |
| | Iminobispropylamine | Corrosive material | UN2269 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Initiating explosive *Diazodinitrophenol* | Class A explosive | | Explosive A | None | 173.70 | Forbidden | Forbidden | 6 | 5 | |
| | Initiating explosive *Fulminate of mercury* | Class A explosive | | Explosive A | None | 173.71 | Forbidden | Forbidden | 6 | 5 | |

## §172.101 Hazardous Materials Table (cont'd)



| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | Initiating explosive *Guanyl nitrosamino guanylidene hydrazine* | Class A explosive | | Explosive A | None | 173.72 | Forbidden | Forbidden | 6 | 5 | |
| | Initiating explosive *Lead azide, dextrinated type only* | Class A explosive | | Explosive A | None | 173.73 | Forbidden | Forbidden | 6 | 5 | |
| | Initiating explosive *Lead mononitroresorcinate* | Class A explosive | | Explosive A | None | 173.70 | Forbidden | Forbidden | 6 | 5 | |
| | Initiating explosive Lead styphnate (*lead trinitroresorcinate*) | Class A explosive | | Explosive A | None | 173.74 | Forbidden | Forbidden | 6 | 5 | |
| | Initiating explosive *Nitro mannite* | Class A explosive | | Explosive A | None | 173.75 | Forbidden | Forbidden | 6 | 5 | |
| | Initiating explosive *Nitrosoguanidine* | Class A explosive | | Explosive A | None | 173.76 | Forbidden | Forbidden | 6 | 5 | |
| | Initiating explosive *Pentaerythrite tetranitrate* | Class A explosive | | Explosive A | None | 173.77 | Forbidden | Forbidden | 6 | 5 | |
| | Initiating explosive Tetrazene (*guanyl nitrosamine guanyl tetrazene*) | Class A explosive | | Explosive A | None | 173.78 | Forbidden | Forbidden | 6 | 5 | |
| * | Ink | Combustible liquid | NA2867 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Ink | Flammable liquid | NA1210 | Flammable liquid | 173.118 | 173.144 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Insecticide, dry, n.o.s. | Poison B | NA2588 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Insecticide, liquefied gas (*containing no Poison A or B material*) | Nonflammable gas | NA1968 | Nonflammable gas | 173.306 | 173.304 | 150 pounds | 300 pounds | 1,3 | 1,3 | |
| | Insecticide, liquefied gas, containing Poison A material *or* Poison B material | Poison A | NA1967 | Poison gas | None | 173.329 173.334 | Forbidden | Forbidden | 1 | 5 | Shade from radiant heat |
| * | Insecticide, liquid, n.o.s. | Combustible liquid | NA1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Insecticide, liquid, n.o.s. | Flammable liquid | NA1993 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Insecticide, liquid, n.o.s. | Poison B | NA2902 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1,2 | |
| W | Insulation tape (*varnished cloth type*). *See* Oiled material | | NA1953 | | | | | | | | |
| | Iodine monochloride | Corrosive material | UN1792 | Corrosive | None | 173.293 | Forbidden | 1 quart | 1 | 5 | Keep dry |
| | Iodine pentafluoride | Oxidizer | UN2495 | Oxidizer and Poison | None | 173.246 | Forbidden | 100 pounds | 1 | 1 | Keep dry |
| | Iron chloride, solid. *See* Ferric chloride, solid | | UN1773 | | | | | | | | |
| | Iron mass *or* sponge, *not properly oxidized* | Flammable solid | NA1383 | Flammable solid | None | 173.174 | Forbidden | Forbidden | 1,2 | 5 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| | Iron mass *or* sponge spent | Flammable solid | NA1376 | Flammable solid | None | 173.174 | Forbidden | Forbidden | 1,2 | 5 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| A | *Iron, oxide, spent* | | UN1376 | | | | Forbidden | Forbidden | | | |
| | Iron sesquichloride, solid. *See* Ferric chloride | | UN1773 | | | | | | | | |
| | Irritating agent, n.o.s. | Irritating material | NA1693 | Irritant | 173.382 | | Forbidden | 75 pounds | 1 | 1 | Stow away from living quarters |
| | Isobutane *or* Liquefied petroleum gas. *See* Liquefied petroleum gas | | UN1969 | | | | | | | | |
| | Isobutyl acetate | Flammable liquid | UN1213 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Isobutylamine | Flammable liquid | UN1214 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Isobutylene or Liquefied petroleum gas. *See* Liquefied petroleum gas | | UN1055 | | | | | | | | |
| | Isobutyric acid | Corrosive material | UN2529 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Isobutyric anhydride | Corrosive material | UN2530 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Isooctane | Flammable liquid | UN1262 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Isooctene | Flammable liquid | UN1216 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | |
| | Isopentane | Flammable liquid | NA2371 | Flammable liquid | 173.118 | 173.119 | Forbidden | 10 gallons | 1,3 | 4 | |
| | Isopentanoic acid | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| E | Isoprene (*RQ-1000/454*) | Flammable liquid | UN1218 | Flammable liquid | 173.118 | 173.119 | Forbidden | 10 gallons | 1,3 | 4 | |
| | Isopropanol. *See* Alcohol, n.o.s. | | UN1219 | | | | | | | | |
| E | Isopropanolamine dodecylbenzenesulfonate (*RQ-1000/454*) | ORM-E | NA9127 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Isopropyl acetate | Flammable liquid | UN1220 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Isopropyl acid phosphate solid | Corrosive material | UN1793 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| | Isopropyl mercaptan | Flammable liquid | UN2703 | Flammable liquid | None | 173.141 | Forbidden | 10 gallons | 1,3 | 5 | |
| | Isopropyl nitrate | Flammable liquid | UN1222 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Isopropyl percarbonate, stabilized | Organic peroxide | NA2133 | Organic peroxide | None | 173.282 | Forbidden | Forbidden | 5 | 5 | |
| | Isopropyl percarbonate, unstabilized | Organic peroxide | NA2134 | Organic peroxide | None | 173.218 | Forbidden | Forbidden | 5 | 5 | |
| | Isopropyl phosphoric acid, solid. *See* Isopropyl acid phosphate, solid | | UN1793 | | | | | | | | |
| | Isopropylamine | Flammable liquid | UN1221 | Flammable liquid | None | 173.119 | Forbidden | 10 gallons | 1,3 | 5 | |
| | Jet thrust igniter. *See* Igniter, jet thrust | | | | | | | | | | |
| * | Jet thrust unit (*jato*) | Class A explosive | | Explosive A | None | 173.79 | Forbidden | Forbidden | 6 | 5 | |
| * | Jet thrust unit (*jato*) | Class B explosive | | Explosive B | None | 173.92 | Forbidden | 550 pounds | 1,3 | 5 | |
| W | *Jute.* *See* Fibers | | | | | | | | | | |

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## §172.101 Hazardous Materials Table (cont'd)

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| W | *Kapok. See* Fibers | | | | | | | | | | |
| E | Kelthane (*RQ-5000/2270*) | ORM-E | NA2761 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Kepone (*RQ-1/0.454*) | ORM-E | NA2761 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Kerosene | Combustible liquid | UN1223 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Lacquer base, liquid. *See* Paint, enamel, lacquer, stain, etc. | | UN1263 | | | | | | | | |
| * | Lacquer base, *or* Lacquer chips, dry | Flammable solid | NA2557 | Flammable solid | 173.153 | 173.175 | 25 pounds | 100 pounds | 1 | 1 | |
| * | Lacquer base *or* lacquer chips, plastic (*Wet with alcohol or solvent*) | Flammable liquid | NA1263 | Flammable liquid | 173.118 | 173.127 | 1 quart | 25 pounds | 1,2 | 1 | |
| * | Lacquer removing, reducing, *or* thinning compound. *See* Compound, laquer, paint, *or* varnish, etc., removing, reducing *or* thinning liquid | | NA1142 | | | | | | | | |
| * | Lacquer. *See* Paint, enamel, lacquer, stain, etc. | | UN1263 | | | | | | | | |
| | Lauroyl peroxide | Organic peroxide | UN2124 | Organic peroxide | 173.153 | 173.157 173.158 | 2 pounds | 25 pounds | 1,2 | 1 | |
| E | Lead acetate (*RQ-5000/2270*) | ORM-E | UN1616 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Lead arsenate, solid (*RQ-5000/2270*) | Poison B | UN1617 | Poison | 173.364 | 173.367 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Lead arsenite, solid | Poison B | UN1618 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | *Lead azide. See* Initiating explosive | | | | | | | | | | |
| EA | Lead chloride (*RQ-5000/2270*) | ORM-B | NA2291 | None | 173.505 | 173.510 173.800 | 25 pounds | 100 pounds | | | |
| | Lead cyanide | Poison B | UN1620 | Poison | 173.370 | | 25 pounds | No limit | 1,2 | 1,2 | Stow away from acids |
| W | Lead dross | ORM-C | NA1794 | None | 173.505 | 173.1010 | | | 1,2 | 1,2 | Segregation same as for corrosive materials |
| EA | Lead fluoborate (*RQ-5000/2270*) | ORM-B | NA2291 | None | None | 173.510 | 25 pounds | 100 pounds | 2 | 2 | |
| EA | Lead fluoride (*RQ-1000/454*) | ORM-B | NA2811 | None | None | 173.510 | 25 pounds | 100 pounds | 2 | 2 | |
| E | Lead iodide (*RQ-5000/2270*) | ORM-E | NA2811 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | *Lead mononitroresorcinate. See* Initiating explosive | | | | | | | | | | |
| E | Lead nitrate (*RQ-5000/2270*) | Oxidizer | UN1469 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | Stow away from foodstuffs |
| | Lead peroxide | Oxidizer | UN1872 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | Stow away from foodstuffs |
| W | Lead scrap. *See* Lead dross | | | | | | | | | | |
| E | Lead stearate (*RQ-5000/2270*) | ORM-E | NA2811 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | *Lead styphnate (lead trinitroresorcinate). See* Initiating explosive | | | | | | | | | | |
| E | Lead sulfate, solid (*containing more than 3% free acid*) (*RQ-5000/2270*) | Corrosive material | UN1794 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| E | Lead sulfide (*RQ-5000/2270*) | ORM-E | NA2291 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Lead thiocyanate (*RQ-5000/2270*) | ORM-E | NA2291 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| * | Leather bleach *or* dressing | Flammable liquid | NA1993 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Leather bleach *or* dressing | Combustible liquid | NA1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Life-rafts, inflatable | ORM-C | | None | None | 173.906 | 1 per inaccessible cargo compartment | No limit | 1,2 | 1,2 | |
| | Lighter fluid | Flammable liquid | UN1226 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | *Lime-nitrogen. See* Calcium cyanamide, not hydrated, etc. | | NA1403 | | | | | | | | |
| E | Lime, slaked. *See* Calcium hydroxide | | | | | | | | | | |
| | Lime, unslaked. *See* Calcium oxide | | NA1910 | | | | | | | | |
| EA | Lindane (*RQ-1/.454*) | ORM-A | NA2761 | None | 173.505 | 173.510 | No limit | No limit | | | |
| | Liquefied hydrocarbon gas. *See* Hydrocarbon gas, liquefied | | NA1965 | | | | | | | | |
| * | Liquefied nonflammable gas (*charged with nitrogen, carbon dioxide, or air*) | Nonflammable gas | NA1956 | Nonflammable gas | 173.306 | 173.304 | 300 pounds | 300 pounds | 1,2 | 1,2 | |
| | Liquefied petroleum gas | Flammable gas | UN1075 | Flammable gas | 173.306 | 173.304 173.314 173.315 | Forbidden | 300 pounds | 1,2 | 1 | |
| | *Liquid other than one classed as flammable, corrosive, poison or irritant, charged with nitrogen, carbon dioxide, or air. See* Compressed gas n.o.s. | | | | | | | | | | |
| | Lithium acetylide-ethylene diamine complex | Flammable solid | NA2813 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 25 pounds | 1,2 | 5 | Segregation same as for flammable solid labeled Dangerous When Wet |
| | Lithium aluminum hydride | Flammable solid | UN1410 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 25 pounds | 1,2 | 5 | Segregation same as for flammable solid labeled Dangerous When Wet |
| | Lithium aluminum hydride, ethereal | Flammable liquid | UN1411 | Flammable liquid | None | 173.137 | Forbidden | 1 quart | 1 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |
| | Lithium amide, powdered | Flammable solid | UN1412 | Flammable solid | 173.153 | 173.168 | 25 pounds | 100 pounds | 1,2 | 4 | Segregation same as for flammable solids labeled Dangerous When Wet |
| | Lithium borohydride | Flammable solid | UN1413 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 25 pounds | 1,2 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |
| E | Lithium chromate (*RQ-1000/454*) | ORM-E | NA9134 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Lithium ferrosilicon | Flammable solid | UN2830 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 25 pounds | 1,2 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |

## §172.101 Hazardous Materials Table (cont'd)



| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | Lithium hydride | Flammable solid | UN1414 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 25 pounds | 1,2 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |
| | Lithium hydride in fused solid form | Flammable solid | UN2805 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 100 pounds | 1,2 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |
| | Lithium hypochlorite compound, dry (*containing more than 39% available chlorine*) | Oxidizer | UN1471 | Oxidizer | 173.153 | 173.217 | 50 pounds | 100 pounds | 1,2 | 1,2 | |
| | Lithium metal | Flammable solid | UN1415 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 25 pounds | 1,2 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |
| | Lithium metal, in cartridges | Flammable solid | NA1415 | Flammable solid and Dangerous when wet | 173.206 | | 1 pound | 25 pounds | 1,2 | 4 | Segregation same as for flammable solids labeled Dangerous When Wet |
| | Lithium nitride | Flammable solid | UN2806 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 25 pounds | 1,2 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |
| | Lithium peroxide | Oxidizer | UN1472 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry |
| | Lithium silicon | Flammable solid | UN1417 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 25 pounds | 1,2 | 1,2 | Segregation same as for flammable solids labeled Dangerous When Wet |
| | London purple, solid | Poison B | UN1621 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | *Low blasting explosive. See* Low explosive | | | | | | | | | | |
| | Low explosive | Class A explosive | | Explosive A | None | 173.60 | Forbidden | Forbidden | 6 | 5 | |
| | *Lye. See* Sodium hydroxide, solid | | UN1823 | | | | | | | | |
| | Magnesium aluminum phosphide | Flammable solid | UN1419 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 25 pounds | 1,2 | 1,2 | Segregation same as for flammable solids labeled Dangerous When Wet |
| | Magnesium arsenate, solid | Poison B | UN1622 | Poison | 173.364 | 173.367 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Magnesium dross, wet or hot | Forbidden | | | 173.173 | | | | | | |
| * | Magnesium, metal (*powdered, pellets, turnings, or ribbons*) | Flammable solid | NA1418 | Flammable solid and Dangerous when wet | 173.153 | 173.220 | 25 pounds | 100 pounds | 1,2 | 1,2 | Segregation same as for flammable solids labeled Dangerous When Wet |
| | Magnesium nitrate | Oxidizer | UN1474 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| | Magnesium perchlorate | Oxidizer | UN1475 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,3 | 1,3 | Stow away from powdered metals |
| | Magnesium peroxide, solid | Oxidizer | UN1476 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry |
| * | Magnesium scrap (*borings, clippings, shavings, sheet, turnings, or scalpings*) | Flammable solid | NA1869 | Flammable solid and Dangerous when wet | 173.153 | 173.220 | Forbidden | Forbidden | 1,2 | 1,2 | Segregation same as for flammable solids labeled Dangerous When Wet |
| A | Magnetized material | ORM-C | UN2807 | Magnetized material | None | 173.1020 | No limit | No limit | | | |
| EA | Malathion (*RQ-10/4.54*) | ORM-A | NA2783 | None | 173.505 | 173.510 | No limit | No limit | | | |
| EA | Maleic acid (*RQ-5000/2270*) | ORM-A | NA2215 | None | None | 173.510 | 25 pounds | 100 pounds | 2 | 2 | Keep tightly closed. |
| EA | Maleic anhydride (*RQ-5000/2270*) | ORM-A | UN2215 | None | None | 173.510 | 25 pounds | 100 pounds | 1 | 1 | |
| A | Manganese dioxide | ORM-B | NA1479 | None | 173.505 | 173.510 | No limit | No limit | | | |
| | *Matches, block. See* Matches, strike anywhere | | UN1331 | | | | | | | | |
| | Matches, safety, *book, card, or strike-on-box* | Flammable solid | UN1944 | Flammable solid | 173.176 | | 50 pounds | 50 pounds | 1,2 | 1 | |
| | Matches, strike anywhere | Flammable solid | UN1331 | Flammable solid | None | 173.176 | Forbidden | Forbidden | 1,2 | 1 | |
| | Matting acid. *See* Sulfuric acid | | UN1830 | | | | | | | | |
| * | Medicines, n.o.s. | Combustible liquid | NA1851 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Medicines, n.o.s. | Flammable liquid | NA1851 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Medicines, n.o.s. | Flammable solid | NA1851 | Flammable solid | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| * | Medicines, n.o.s. | Oxidizer | NA1851 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| * | Medicines, n.o.s., liquid | Corrosive material | NA1851 | Corrosive | 173.244 | 173.245 | 1 quart | 1 quart | 1,2 | 1,2 | |
| * | Medicines, n.o.s., liquid | Poison B | NA1851 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,3 | 1 | |
| * | Medicines, n.o.s., solid | Corrosive material | NA1851 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry |
| * | Medicines, n.o.s., solid | Poison B | NA1851 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,3 | 1,3 | |
| | Memtetrahydro phthalic anhydride | Corrosive material | NA1760 | Corrosive | None | 173.298 | Forbidden | 1 quart | 1,2 | 1 | |
| * | Mercaptan mixture, aliphatic | Flammable liquid | NA1228 | Flammable liquid | None | 173.141 | Forbidden | 10 gallons | 1,3 | 5 | |
| * | Mercaptan mixture, aliphatic (*in containers over 110 gallons*) | Combustible liquid | NA1228 | None | 173.118a | None | Forbidden | 10 gallons | 1,2 | 1,2 | |
| AW | Mercaptan mixture, aliphatic (*in containers of 110 gallons or less). See 173.141(b)* | ORM-A | NA1228 | None | 173.505 | 173.510 | Forbidden | 10 gallons | 1,3 | 5 | Stow in well ventilated space away from living quarters |
| E | Mercaptodimethur (*RQ-100/45.4*) | ORM-E | NA2757 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Mercuric acetate | Poison B | UN1629 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Mercuric-ammonium chloride, solid | Poison B | UN1630 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Mercuric benzoate, solid | Poison B | UN1631 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Mercuric bromide, solid | Poison B | UN1634 | Poison | 173.364 | 173.365 | Forbidden | 25 pounds | 1,2 | 1,2 | |
| | Mercuric chloride, solid | Poison B | UN1624 | Poison | 173.364 | 173.372 | Forbidden | 25 pounds | 1,2 | 1,2 | |
| E | Mercuric cyanide, solid (*RQ-1/.454*) | Poison B | UN1636 | Poison | 173.370 | | 25 pounds | 200 pounds | 1,2 | 1,2 | Stow away from acids |
| | Mercuric iodide, solid | Poison B | UN1638 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| * | Mercuric iodide solution | Poison B | NA1638 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1,2 | |

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## §172.101 Hazardous Materials Table (cont'd)

| (1) */E/A/W | (2) Hazardous materials descriptions and proper shipping names | (3) Hazard class | (3A) ID Number | (4) Label(s) required (if not excepted) | (5) Packaging (a) Exceptions | (5) Packaging (b) Specific requirements | (6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar | (6) Maximum net quantity in one package (b) Cargo only aircraft | (7) Water shipments (a) Cargo vessel | (7) Water shipments (b) Passenger vessel | (c) Other requirements |
|---|---|---|---|---|---|---|---|---|---|---|---|
| * | Mercuric nitrate (*RQ-10/4.54*) | Oxidizer | UN1625 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | If stowed under deck, must be stowed in a recoverable location. |
| | Mercuric oleate, solid | Poison B | UN1640 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Mercuric oxide, solid | Poison B | UN1641 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Mercuric oxycyanide, solid | Poison B | UN1642 | Poison | 173.364 | 173.365 | 25 pounds | 200 pounds | 1,2 | 1,2 | Stow away from acids |
| | Mercuric-potassium cyanide, solid | Poison B | UN1626 | Poison | 173.364 | 173.365<br>173.370 | 25 pounds | 200 pounds | 1,2 | 1,2 | Stow away from acids |
| | Mercuric-potassium iodide, solid | Poison B | UN1643 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Mercuric salicylate solid | Poison B | UN1644 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Mercuric subsulfate, solid | Poison B | NA2025 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| E | Mercuric sulfate, solid (*RQ-10/4.54*) | Poison B | UN1645 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| E | Mercuric sulfocyanate, solid or mercuric thiocyanate, solid (*RQ-10/4.54*) | Poison B | UN1646 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Mercurol *or* mercury nucleate, solid | Poison B | UN1639 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Mercurous acetate, solid | Poison B | NA1629 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Mercurous bromide, solid | Poison B | NA1634 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Mercurous gluconate, solid | Poison B | NA1637 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Mercurous iodide, solid | Poison B | NA1637 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| E | Mercurous nitrate, solid (*RQ-10/4.54*) | Oxidizer | UN1627 | Oxidizer | 173.153 | 173.154 | 50 pounds | 100 pounds | 1,2 | 1,2 | |
| | Mercurous oxide, black, solid | Poison B | NA1641 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Mercurous sulfate, solid | Poison B | UN1628 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| * | Mercury compound, n.o.s., solid | Poison B | UN2025 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | *Mercury fulminate.* *See* Initiating explosive | | | | | | | | | | |
| A | Mercury, metallic | ORM-B | NA2809 | None | None | 173.860 | 173.860 | 173.860 | | | |
| | Mesityl oxide | Flammable liquid | UN1229 | Flammable liquid | None | 173.119 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| W | Metal borings, shavings, turnings, *or* cuttings | ORM-C | NA2793 | None | 173.505 | 173.1025 | | | 1,2 | 1,2 | Keep dry. Not permitted if temperature of material is at or above 130 deg F |
| | Methane | Flammable gas | UN1971 | Flammable gas | 173.306 | 173.302 | Forbidden | 300 pounds | 1,2 | 4 | |
| | Methanol. *See* Methyl alcohol | | UN1230 | | | | | | | | |
| E | Methoxychlor (*RQ-1/0.454*) | ORM-E | NA2761 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Methyl acetate | Flammable liquid | UN1231 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Methyl acetone | Flammable liquid | UN1232 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Methyl acrylate, inhibited | Flammable liquid | UN1919 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Methyl alcohol | Flammable liquid | UN1230 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Methylamyl acetate | Flammable liquid | UN1233 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Methyl amyl ketone | Combustible liquid | UN1110 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Methyl bromide and ethylene dibromide mixture, liquid | Poison B | UN1647 | Poison | None | 173.353 | Forbidden | 55 gallons | 1 | 1 | |
| | Methyl bromide and more than 2% chloropicrin mixture, liquid | Poison B | NA1581 | Poison | None | 173.353 | Forbidden | Forbidden | 1 | 5 | Shade from radiant heat |
| | Methyl bromide and nonflammable, nonliquefied compressed gas mixture, liquid (*including up to 2% chloropicrin*) | Poison B | NA1955 | Poison | None | 173.353a | Forbidden | 300 pounds | 1 | 5 | Stow away from living quarters |
| | Methyl bromide, liquid (*bromomethane*) (*including up to 2% chloropicrin*) | Poison B | NA1581 | Poison | None | 173.353 | Forbidden | 55 gallons | 1 | 5 | Stow away from living quarters. Segregation same as for nonflammable gas. |
| | Methyl butene | Flammable liquid | NA2460 | Flammable liquid | None | 173.119 | Forbidden | 10 gallons | 1,2 | 5 | |
| | Methyl butyrate | Flammable liquid | UN1237 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | *Methyl cellosolve acetate.* *See* Ethylene glycol monomethyl ether acetate | | UN1189 | | | | | | | | |
| | *Methyl cellosolve.* *See* Ethylene glycol monomethyl ether | | UN1188 | | | | | | | | |
| | Methyl chloride | Flammable gas | UN1063 | Flammable gas | 173.306 | 173.304<br>173.314<br>173.315 | Forbidden | 300 pounds | 1,2 | 4 | |
| * | Methyl chloride-methylene chloride mixture | Flammable gas | UN1912 | Flammable gas | 173.306 | 173.304<br>173.314 | Forbidden | 300 pounds | 1,2 | 4 | |
| | Methyl chlorocarbonate. *See* Methyl chloroformate | | UN1238 | | | | | | | | |
| A | Methyl chloroform | ORM-A | UN1231 | None | 173.505 | 173.510<br>173.605 | 10 gallons | 55 gallons | | | |
| | Methyl chloroformate | Flammable liquid | UN1238 | Flammable liquid and Poison | None | 173.288 | Forbidden | 5 pints | 1,2 | 1 | |
| | Methyl dichloroacetate | Corrosive material | UN2299 | Corrosive | 173.244 | 173.245 | 1 quart | 1 quart | 1,2 | 1,2 | |
| | Methyl dichlorosilane | Flammable liquid | UN1242 | Flammable liquid | None | 173.136 | Forbidden | 5 pints | 1,2 | 1 | |
| | Methyl ethyl ether. *See* Ethyl methyl ether | | UN1039 | | | | | | | | |
| | Methyl ethyl ketone | Flammable liquid | UN1193 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Methyl ethyl pyridine | Corrosive material | UN2300 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Methyl formate | Flammable liquid | UN1243 | Flammable liquid | 173.118 | 173.119 | Forbidden | 10 gallons | 1,3 | 4 | |
| | Methyl isopropenyl ketone, inhibited | Flammable liquid | UN1246 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Methyl magnesium bromide in ethyl ether *not over 40% concentration* | Flammable liquid | UN1928 | Flammable liquid | None | 173.149 | Forbidden | Forbidden | 1 | 1 | Segregation same as for flammable solids. Separate from flammable gases or liquids, oxidizing materials or organic peroxides |
| E | Methyl mercaptan (*RQ-100/45.4*) | Flammable gas | UN1064 | Flammable gas | 173.306 | 173.304<br>173.314<br>173.315 | Forbidden | 300 pounds | 1,2 | 1 | |
| E | Methyl methacrylate monomer, inhibited (*RQ-5000/2270*) | Flammable liquid | UN1247 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |

## §172.101 Hazardous Materials Table (cont'd)

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| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| E | Methyl methacrylate monomer, uninhibited (*high-purity, if acceptable under See 173.21 of this subchapter*) (*RQ-5000/2270*) | Flammable liquid | NA1247 | Flammable liquid | 173.118 | 173.119 | Forbidden | Forbidden | 1,2 | 1 | |
| | Methyl norbornene dicarboxylic anhydride. *See* Memtetrahydro phthalic anhydride | | NA1760 | | | | | | | | |
| E | Methyl parathion, liquid (*RQ-100/45.4*) | Poison B | NA2783 | Poison | None | 173.358 | Forbidden | 1 quart | 1,3 | 1,3 | |
| *E | Methyl parathion mixture, dry (*RQ-100/45.4*) | Poison B | NA2783 | Poison | 173.377 | 173.377 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| *E | Methyl parathion mixture, liquid, (containing 25% or less methyl parathion) (*RQ-100/45.4*) | Poison B | NA2783 | Poison | None | 173.359 | 1/2 pint | 1 quart | 1,2 | 1,2 | |
| E | Methyl parathion mixture, liquid, (*containing over 25% methyl parathion*) (*RQ-100/45.4*) | Poison B | NA2783 | Poison | None | 173.359 | Forbidden | 1 quart | 1,2 | 1,2 | |
| | Methyl pentane | Flammable liquid | UN2462 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Methyl phosphonothioic dichloride, anhydrous | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 173.245a | 1 quart | 1 quart | 1 | 4 | |
| | Methyl phosphonous dichloride | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 173.245a | 1 quart | 1 quart | 1 | 4 | |
| | Methyl propionate | Flammable liquid | UN1248 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Methyl propyl ketone | Flammable liquid | UN1249 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Methyl sulfate. *See* Dimethyl sulfate | | UN1595 | | | | | | | | |
| | Methyl sulfide. *See* Dimethyl sulfide | | UN1164 | | | | | | | | |
| | Methyl vinyl ketone, inhibited | Flammable liquid | UN1251 | Flammable liquid | 173.147 | 173.147 | 4 ounces | 10 gallons | 1,2 | 1 | |
| | Methylacetylene-propadiene, stabilized | Flammable gas | NA1060 | Flammable gas | 173.306 | 173.304 173.314 173.315 | Forbidden | 300 pounds | 1,2 | 1 | |
| | Methylal | Flammable liquid | UN1234 | Flammable liquid | None | 173.119 | Forbidden | 10 gallons | 1,3 | 5 | |
| | Methylamine, anhydrous *or* Monomethylamine | Flammable gas | UN1061 | Flammable gas | 173.306 | 173.304 173.314 173.315 | Forbidden | 300 pounds | 1 | 4 | |
| | Methylchloromethyl ether, anhydrous | Flammable liquid | UN1239 | Flammable liquid and Poison | None | 173.143 | Forbidden | Forbidden | 1 | 5 | Shade from radiant heat |
| | Methylcyclohexane | Flammable liquid | UN2296 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Methylcyclopentane | Flammable liquid | UN2298 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | |
| | Methyldichloroarsine | Poison A | NA1955 | Poison gas | None | 173.328 | Forbidden | Forbidden | 1 | 5 | Shade from radiant heat |
| | Methylene chloride. *See* Dichloromethane | | UN1593 | | | | | | | | |
| | Methylfuran | Flammable liquid | UN2301 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | |
| | Methylhydrazine | Flammable liquid | UN1244 | Flammable liquid and Poison | None | 173.145 | Forbidden | 5 pints | 1,2 | 1 | Stow separate from oxidizing materials and corrosives |
| | Methylpentadiene | Flammable liquid | UN2461 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Methyltrichlorosilane | Flammable liquid | UN1250 | Flammable liquid | None | 173.135 | Forbidden | 10 gallons | 1,2 | 1 | |
| E | Mevinphos (*RQ-1/0.454*) | Poison B | NA2783 | Poison | 173.364 | 173.365 | Forbidden | 1 quart | 2 | 2 | |
| E | Mexacarbate (*RQ-1000/454*) | Poison B | NA2757 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 2 | 2 | |
| | *Mild detonating fuse, metal clad.* *See* Fuse, mild detonating, metal clad | | | | | | | | | | |
| | *Mine, empty* *See* 173.55 | | | | | | | | | | |
| | *Mine, explosive, with gas material.* *See* Explosive mine | | | | | | | | | | |
| | Mine rescue equipment containing carbon dioxide | Nonflammable gas | | Nonflammable gas | 173.306 | | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| * | Mining reagent, liquid (*containing 20% or more cresylic acid*) | Corrosive material | NA2022 | Corrosive | 173.244 | 173.245 173.249a | 1 quart | 10 gallons | 1,2 | 1,2 | |
| A | Mipafox | ORM-A | UN2783 | None | 173.505 | 173.510 | No limit | No limit | | | |
| | Mixed acid. *See* Nitrating (*mixed*) acid | | NA1796 | | | | | | | | |
| A | Molybdenum pentachloride | ORM-B | UN2508 | None | 173.505 | 173.510 173.800 | 25 pounds | 100 pounds | | | |
| | Monobromotrifluoromethane | Nonflammable gas | UN1009 | Nonflammable gas | 173.306 | 173.304 173.314 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| * | Monochloroacetic acid, liquid *or* solution | Corrosive material | UN1750 | Corrosive | 173.244 | 173.294 | 1 quart | 1 quart | 1,2 | 1,2 | Glass carboys in hampers not permitted under deck |
| | Monochloroacetone | Forbidden | | | | | | | | | |
| | Monochloroacetone, stabilized *or* inhibited | Irritating material | NA1695 | Irritant | None | 173.384 | Forbidden | 5 gallons | 1 | 1 | Stow away from living quarters |
| | Monochlorodifluoromethane | Nonflammable gas | UN1018 | Nonflammable gas | 173.306 | 173.304 173.314 173.315 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| | Monochloroethylene. *See* Vinyl chloride | | UN1086 | | | | | | | | |
| | Monochloropentafluoroethane | Nonflammable gas | UN1020 | Nonflammable gas | 173.306 | 173.304 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| | Monochlorotetrafluoroethane | Nonflammable gas | UN1021 | Nonflammable gas | 173.306 | 173.304 173.314 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| | Monochlorotrifluoromethane | Nonflammable gas | UN1022 | Nonflammable gas | 173.306 | 173.304 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| | Monoethanolamine | Corrosive material | UN2491 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| * | Monoethanolamine, solution | Corrosive material | UN2491 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| E | Monoethylamine (*RQ-1000/454*) | Flammable liquid | UN1036 | Flammable liquid | None | 173.148 | Forbidden | 5 pints | 1,2 | 5 | Segregation same as for flammable gas |
| | Monofluorophosphoric acid, anhydrous | Corrosive material | UN1776 | Corrosive | None | 173.275 | Forbidden | 1 gallon | 1,2 | 1,2 | Keep dry |

26 **§172.101 Hazardous Materials Table (cont'd)**

| (1) | (2) | (3) | (3A) | (4) | (5) | | (6) | | (7) | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Packaging | | Maximum net quantity in one package | | Water shipments | | |
| */ E/ A/ W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| E | Monomethylamine, anhydrous (*RQ-1000/454*) | Flammable gas | UN1061 | Flammable gas | 173.306 | 173.304 173.314 173.315 | Forbidden | 300 pounds | 1,2 | 4 | |
| *E | Monomethylamine, aqueous solution (*RQ-1000/454*) | Flammable liquid | UN1235 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | Stow away from mercury and its compounds |
| | Mortar stain, liquid | Combustible liquid | NA1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Mortar stain, liquid | Flammable liquid | NA1993 | Flammable liquid | 173.118 | 173.128 | 1 quart | 55 gallons | 1,2 | 1 | |
| | *Moth balls. See* Naphthalene | | UN1334 | | | | | | | | |
| | *Motion picture film. See* Film | | | | | | | | | | |
| | Motor fuel antiknock compound *or* antiknock compound | Poison B | UN1649 | Poison | None | 173.354 | Forbidden | 55 gallons | 1 | 5 | If flashpoint less than 141 deg F, segregation same as for flammable liquids |
| * | Motor fuel, n.o.s. | Combustible liquid | NA1203 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Motor fuel, n.o.s. | Flammable liquid | NA1203 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Motor, internal combustion | | | | 173.120 | | | | | | |
| | Motor vehicle, *etc., including automobile, motorcycle, truck, tractor, and other self-propelled vehicle or equipment powered by internal combustion engine, when offered new or used for transportation and which contain fuel in the engine or fuel tank or the electric storage battery is connected to either terminal of the electrical system* | ORM-C | | None | 173.120 173.250 173.257 173.306 175.305 176.905 | | | | 1,2 | 1,2 | |
| | Muriatic acid. *See* Hydrochloric (*muriatic*) acid | | UN1789 | | | | | | | | |
| E | Naled (*RQ-10/4.54*) | ORM-E | NA2783 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| * | Naphtha | Combustible liquid | NA2553 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Naphtha | Flammable liquid | NA2553 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Naphtha distillate | Combustible liquid | NA2553 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Naphtha distillate | Flammable liquid | NA2553 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | *Naphtha petroleum. See* Petroleum naphtha | | UN1255 | | | | | | | | |
| * | Naphtha, solvent | Combustible liquid | UN1256 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Naphtha, solvent | Flammable liquid | UN1256 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| EAW | Naphthalene *or* Naphthalin (*RQ-5000/2270*) | ORM-A | UN1334 | None | 173.505 | 173.655 | 25 pounds | 300 pounds | 1,2 | 1,2 | Segregation same as for flammable solids |
| E | Napthenic acid (*RQ-100/45.4*) | ORM-E | NA9137 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | *Natural gasoline. See* Gasoline | | | | | | | | | | |
| | Neohexane | Flammable liquid | UN1208 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | |
| * | Neon | Nonflammable gas | UN1065 | Nonflammable gas | 173.306 | 173.302 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| | *New explosive or explosive device* | | | | 173.51 | 173.86 | | | | | |
| E | Nickel ammonium sulfate (*RQ-5000/2270*) | ORM-E | NA9138 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Nickel carbonyl | Flammable liquid | UN1259 | Flammable liquid and Poison | None | 173.126 | Forbidden | Forbidden | 1 | 5 | Not permitted on a vessel carrying explosives. Shade from radiant heat. Segregation same as for flammable liquids 1a* |
| | Nickel catalyst, wet, *finely divided, activated, or spent. With not less than 40% water or other suitable liquid* | Flammable solid | UN1378 | Flammable solid | None | 173.233 | Forbidden | 100 pounds | 1,2 | 1 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| E | Nickel chloride (*RQ-5000/2270*) | ORM-E | NA9139 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Nickel cyanide, solid | Poison B | UN1653 | Poison | 173.370 | | 25 pounds | 200 pounds | 1,2 | 1,2 | Stow away from acids |
| E | Nickel hydroxide (*RQ-1000/454*) | ORM-E | NA9140 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Nickel nitrate (*RQ-5000/2270*) | Oxidizer | UN2725 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 2 | 2 | |
| E | Nickel sulfate (*RQ-5000/2270*) | ORM-E | NA9141 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Nicotine hydrochloride | Poison B | UN1656 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1,2 | |
| | Nicotine, liquid | Poison B | UN1654 | Poison | None | 173.358 | Forbidden | 55 gallons | 1,2 | 1,2 | |
| | Nicotine salicylate | Poison B | UN1657 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| * | Nicotine sulfate, liquid | Poison B | UN1658 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1,2 | |
| | Nicotine sulfate, solid | Poison B | UN1658 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Nicotine tartrate | Poison B | UN1659 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| * | Nitrate, n.o.s. | Oxidizer | NA1477 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| | *Nitrate of ammonia explosives. See* High explosive | | | | | | | | | | |
| | Nitrating (*mixed*) acid | Oxidizer | NA1796 | Oxidizer | None | 173.267 | Forbidden | 1 quart | 1 | 5 | Segregation same as for corrosive materials |
| | Nitrating (*mixed*) acid, spent | Corrosive material | UN1826 | Corrosive | None | 173.248 | Forbidden | 1 quart | 1 | 5 | |
| E | Nitric acid, 40% or less (*RQ-1000/454*) | Corrosive material | NA1760 | Corrosive | None | 173.268 | Forbidden | 5 pints | 1 | 5 | Stow away from hydrazine, separate from diethylenetriamine |
| E | Nitric acid, fuming (*RQ-1000/454*) | Oxidizer | NA2032 | Oxidizer and Poison | None | 173.268 | Forbidden | Forbidden | 1 | 5 | Segregation same as for corrosive materials. Stow away from hydrazine, separate from diethylenetriamine |
| E | Nitric acid (*over 40%*) (*RQ-1000/454*) | Oxidizer | NA2031 | Oxidizer and Corrosive | None | 173.268 | Forbidden | 5 pints | 1 | 5 | Segregation same as for corrosive materials. Stow away from hydrazine, separate from diethylenetriamine |
| | *Nitric ether. See* Ethyl nitrate | | | | | | | | | | |
| | Nitric oxide | Poison A | UN1660 | Poison gas | None | 173.337 | Forbidden | Forbidden | 1 | 5 | |
| | *Nitro carbonitrate. See* Blasting agent | | | | | | | | | | |
| | *Nitro carbonitrate. See* High explosive | | | | | | | | | | |
| | Nitroaniline | Poison B | UN1661 | Poison | 173.364 | 173.378 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | p-Nitroaniline. *See* Nitroaniline | | UN1661 | | | | | | | | |
| E | Nitrobenzol, liquid (*oil of mirbane, nitrobenzene*) (*RQ-1000/454*) | Poison B | UN1662 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1,2 | |
| | Nitrocellulose, colloided, granular *or* flake, wet with not less than 20% alcohol *or* solvent, *or* block, wet with not less than 25% alcohol | Flammable liquid | NA2556 | Flammable liquid | 173.118 | 173.127 | 1 quart | 25 pounds | 1,3 | 1 | |

## §172.101 Hazardous Materials Table (cont'd)



| (1) */ E/ A/ W | (2) Hazardous materials descriptions and proper shipping names | (3) Hazard class | (3A) ID Number | (4) Label(s) required (if not excepted) | (5) Packaging (a) Exceptions | (5) Packaging (b) Specific requirements | (6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar | (6) Maximum net quantity in one package (b) Cargo only aircraft | (7) Water shipments (a) Cargo vessel | (7) Water shipments (b) Passenger vessel | (c) Other requirements |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Nitrocellulose, colloided, granular *or* flake, wet with not less than 20% water | Flammable solid | NA2555 | Flammable solid | 173.153 | 173.184 | 25 pounds | 100 pounds | 1,3 | 1 | |
| | *Nitrocellulose, dry. See* High explosive | | | | | | | | | | |
| | Nitrocellulose flakes, wet with not less than 20% alcohol *or* solvent | Flammable liquid | NA2556 | Flammable liquid | 173.118 | 173.127 | 1 quart | 25 pounds | 1,3 | 1 | |
| | Nitrocellulose, wet with not less than 30% alcohol *or* solvent | Flammable liquid | NA2556 | Flammable liquid | 173.118 | 173.127 | 1 quart | 25 pounds | 1,3 | 1 | |
| | Nitrocellulose, wet with not less than 20% water | Flammable solid | NA2555 | Flammable solid | 173.153 | 173.184 | 25 pounds | 100 pounds | 1,3 | 1 | |
| | Nitrochlorobenzene, meta *or* para, solid | Poison B | NA1578 | Poison | 173.364 | 173.374 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Nitrochlorobenzene, ortho, liquid | Poison B | NA1578 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1,2 | |
| * | Nitrogen | Nonflammable gas | NA1066 | Nonflammable gas | 173.306 | 173.302 173.314 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| E | Nitrogen dioxide, liquid (*RQ-1000/454*) | Poison A | UN1067 | Oxidizer and Poison gas | None | 173.336 | Forbidden | Forbidden | 1 | 5 | Segregation same as for nonflammable gases. Stow away from organic materials |
| * | Nitrogen fertilizer solution | Nonflammable gas | NA1043 | Nonflammable gas | 173.306 | 173.304 173.314 | 150 pounds | 300 pounds | 1,3 | 1,3 | |
| * | Nitrogen peroxide, liquid | Poison A | NA1067 | Oxidizer and Poison gas | None | 173.336 | Forbidden | Forbidden | 1 | 5 | Segregation same as for nonflammable gas. Stow away from organic materials |
| * | Nitrogen, pressurized Liquid | Nonflammable gas | NA1977 | Nonflammable gas | None | 173.304 | Forbidden | 300 pounds | 1,3 | 1,3 | |
| | Nitrogen tetroxide, liquid | Poison A | UN1067 | Oxidizer and Poison gas | None | 173.336 | Forbidden | Forbidden | 1 | 5 | Segregation same as for nonflammable gases. Stow away from organic materials |
| | *Nitroglycerin, liquid, desensitized. See* High explosive, liquid | | | | | | | | | | |
| | *Nitroglycerin, liquid, undesensitized. See* 173.51 | Forbidden | | | | | | | | | |
| | *Nitroglycerin, spirits of. See* Spirits of nitroglycerin | | NA1204 | | | | | | | | |
| | *Nitroguanidine, dry. See* High explosive | | | | | | | | | | |
| | Nitroguanidine, wet with not less than 20% water | Flammable solid | UN1336 | Flammable solid | 173.153 | 173.184 | 25 pounds | 100 pounds | 1,2 | 4 | |
| | Nitrohydrochloric acid | Corrosive material | UN1798 | Corrosive | None | 173.278 | Forbidden | 5 pints | 1 | 5 | |
| * | Nitrohydrochloric acid, diluted | Corrosive material | NA1798 | Corrosive | None | 173.278 | Forbidden | 5 pints | 1 | 5 | |
| | *Nitromannite. See* High explosive | | | | | | | | | | |
| | Nitromethane | Flammable liquid | UN1261 | Flammable liquid | 173.118 | 173.149a | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Nitromuriatic acid. *See* Nitrohydrochloric acid | | UN1798 | | | | | | | | |
| E | Nitrophenol (*RQ-1000/454*) | ORM-E | UN1663 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Nitrosoguanidine. *See* Initiating explosive | | | | | | | | | | |
| | Nitrostarch, dry. *See* High explosive | | | | | | | | | | |
| | Nitrostarch, wet with not less than 30% alcohol *or* solvent | Flammable liquid | NA1993 | Flammable liquid | 173.118 | 173.127 | 1 quart | 25 pounds | 1,2 | 1 | |
| | Nitrostarch, wet with not less than 20% water | Flammable solid | UN1337 | Flammable solid | 173.153 | 173.184 | 25 pounds | 100 pounds | 1 | 4 | |
| | Nitrosyl chloride | Nonflammable gas | UN1069 | Nonflammable gas | 173.306 | 173.304 173.314 | Forbidden | 300 pounds | 1 | 4 | |
| E | Nitrotoluene (*RQ-1000/454*) | ORM-E | UN1664 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | *Nitrourea. See* High explosive | | | | | | | | | | |
| | Nitrous oxide | Nonflammable gas | UN1070 | Nonflammable gas | 173.306 | 173.304 173.315 | 150 pounds | 300 pounds | 1,2 | 1,2 | Under deck stowage must be in well-ventilated space |
| | Nitroxylol | Poison B | NA1665 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1 | |
| | Nonflammable gas, n.o.s. *See* Compressed gas, n.o.s. | | UN1956 | | | | | | | | |
| * | Nonliquefied hydrocarbon gas | Flammable gas | NA1964 | Flammable gas | 173.306 | 173.302 | Forbidden | 300 pounds | 1,2 | 1 | |
| | Nonyltrichlorosilane | Corrosive material | UN1799 | Corrosive | None | 173.280 | Forbidden | 10 gallons | 1 | 1 | Keep dry |
| | Nordhausen acid. *See* Sulfuric acid | | NA1830 | | | | | | | | |
| W | Oakum | ORM-C | | None | 173.505 | 173.1050 | | | 1,2 | 1,2 | |
| | Octadecyltrichlorosilane | Corrosive material | UN1800 | Corrosive | None | 173.280 | Forbidden | 10 gallons | 1 | 1 | Keep dry |
| | Octane | Flammable liquid | UN1262 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Octyltrichlorosilane | Corrosive material | UN1801 | Corrosive | None | 173.280 | Forbidden | 10 gallons | 1 | 1 | Keep dry |
| * | Oil, *described as oil*, n.o.s., petroleum oil, *or* petroleum oil, n.o.s. | Combustible liquid | NA1270 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Oil, *described as oil*, oil, n.o.s., petroleum oil, *or* petroleum oil, n.o.s. | Flammable liquid | NA1270 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | *Oil of mirbane. See* Nitrobenzol, liquid | | UN1662 | | | | | | | | |
| | Oil of vitriol. *See* Sulfuric acid | | NA1830 | | | | | | | | |
| | Oil well cartridge | Class C explosive | UN0278 | Class C explosive | None | 173.112 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Oiled clothing (*manufactured article properly dried to prevent spontaneous heating*). *See* Oiled material | | NA1856 | | | | | | | | |
| AW | Oiled material (*manufactured article properly dried to prevent spontaneous heating*) | ORM-C | NA9053 | None | 173.505 | 173.1035 | No limit | No limit | 1,3 | 1,3 | |
| | Oiled paper (*manufactured article properly dried to prevent spontaneous heating*). *See* Oiled material | | NA1379 | | | | | | | | |
| E | Oleum (*sulfuric acid fuming*) (*RQ-1000/454*) | Corrosive material | NA1831 | Corrosive | None | 173.272 | Forbidden | 5 pints | 1,2 | 1 | Under deck stowage must be in metal drums only. Keep dry. |
| * | Organic peroxide, liquid, *or* solution, n.o.s. | Organic peroxide | NA9183 | Organic peroxide | 173.153 | 173.221 | Forbidden | 1 quart | 1,2 | 1,2 | Stow separate from combustible materials, explosives, or acids. |
| * | Organic peroxide liquid *or* solution, n.o.s. | Flammable liquid | NA1993 | Organic peroxide and Flammable liquid | None | 173.119 | Forbidden | 1 quart | 1,2 | 5 | Stow separate from combustible materials, explosives, or acids |

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## §172.101 Hazardous Materials Table (cont'd)

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| * | Organic peroxide, solid, n.o.s. | Organic peroxide | NA9187 | Organic peroxide | 173.153 | 173.154 | Forbidden | 25 pounds | 1,2 | 1,2 | Stow separate from combustible materials, explosives, or acids. |
| * | Organic phosphate mixture, organic phosphate compound mixture, *or* organic phosphorus compound mixture, liquid | Poison B | NA2783 | Poison | 173.359 | 173.359 | 1/2 pint | 1 quart | 1,2 | 5 | |
| * | Organic phosphate mixture, organic phosphate compound mixture, *or* organic phosphorus compound mixture, solid *or* dry | Poison B | NA2783 | Poison | 173.377 | 173.377 | 50 pounds | 200 pounds | 1,2 | 4 | |
| * | Organic phosphate, organic phosphate compound, *or* organic phosphorus compound, mixed with compressed gas | Poison A | NA1955 | Poison gas | None | 173.334 | Forbidden | Forbidden | 1 | 5 | Shade from radiant heat |
| * | Organic phosphate, organic phosphate compound, *or* organic phosphorus compound; liquid | Poison B | NA2783 | Poison | None | 173.358 | Forbidden | 1 quart | 1,2 | 5 | |
| * | Organic phosphate, organic phosphate compound, *or* organic phosphorus compound; solid *or* dry | Poison B | NA2783 | Poison | None | 173.377 | Forbidden | 200 pounds | 1,2 | 4 | |
| A | ORM-A, n.o.s. | ORM-A | NA1693 | None | 173.505 | 173.510 | No limit | No limit | | | |
| A | ORM-B, n.o.s. | ORM-B | NA1760 | None | 173.505 | 173.510 | No limit | No limit | | | |
| | *ORM-C See* 173.500 and 176.900 | | | | | | | | | | |
| | Orthonitroaniline. *See* Nitroaniline | | | | | | | | | | |
| | *Oxidizer material packed with other articles. See* 173.152 | | UN1661 | | | | | | | | |
| | Oxidizer, *or* Oxidizing material, n.o.s. | Oxidizer | UN1479 | Oxidizer | 173.153 | 173.154 | 25 pounds | 25 pounds | 1,2 | 1,2 | |
| * | Oxygen | Nonflammable gas | NA1072 | Oxidizer | 173.306 | 173.302 173.314 | 150 pounds | 300 pounds | 1,2 | 1,2 | Under deck stowage must be in well ventilated space |
| * | Oxygen, pressurized liquid | Nonflammable gas | NA1073 | Oxidizer | None | 173.304 | Forbidden | Forbidden | 1,3 | 1,3 | Stow separate from acetylene. Do not overstow with other cargo |
| * | Paint drier, liquid | Combustible liquid | UN1168 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Paint drier, liquid | Flammable liquid | UN1168 | Flammable liquid | 173.118 | 173.128 | 1 quart | 55 gallons | 1,2 | 1 | |
| * | Paint, enamel, lacquer, stain, shellac, *or* varnish, aluminum, bronze, gold, wood filler, liquid *or* lacquer base, liquid | Combustible liquid | NA1263 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Paint, enamel, lacquer, stain, shellac, *or* varnish, aluminum, bronze, gold, wood filler, liquid *or* lacquer base, liquid | Flammable liquid | NA1263 | Flammable liquid | 173.118 | 173.128 | 1 quart | 55 gallons | 1,2 | 1 | |
| * | *Paint, reducing or thinning compound. See* Compound, lacquer, paint, *or* varnish, reducing *or* thinning liquid, etc. | | NA1142 | | | | | | | | |
| | *Paper caps. See* Toy caps | | | | | | | | | | |
| W | Paper scrap (*when dry, clean, and free from oil*) | ORM-C | | None | 173.505 | 173.1075 | | | 1,2 | 1,2 | |
| | Paper stock, wet | Flammable solid | NA1325 | Flammable solid | None | 173.185 | Forbidden | Forbidden | 1,2 | 1,2 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| | Paper waste, wet. *See* Waste Paper, wet | | NA1325 | | | | | | | | |
| | Paper waste (*when dry, clean, and free from oil*). *See* Paper scrap | | | | | | | | | | |
| RA | Paraformaldehyde (*RQ-1000/454*) | ORM-A | UN2213 | None | None | 173.510 | 25 pounds | 200 pounds | 2 | 2 | |
| | Paramenthane hydroperoxide | Organic peroxide | UN2125 | Organic peroxide | 173.153 | 173.224 | 1 quart | 1 quart | 1,2 | 4 | |
| | Paranitroaniline, solid. *See* Nitroaniline | | NA1661 | | | | | | | | |
| E | Parathion and compressed gas mixture (*RQ-1/.454*) | Poison A | NA1967 | Poison gas | None | 173.334 | Forbidden | Forbidden | 1,3 | 5 | |
| E | Parathion, liquid (*RQ-1/.454*) | Poison B | NA2783 | Poison | None | 173.358 | Forbidden | 1 quart | 1,3 | | |
| *E | Parathion mixture, dry (*RQ-1/.454*) | Poison B | NA2783 | Poison | 173.377 | 173.377 | 50 pounds | 200 pounds | 1,3 | 1,3 | |
| E | Parathion mixture, liquid (*RQ-1/.454*) | Poison B | NA2783 | Poison | None | 173.359 | Forbidden | 1 quart | 1,3 | 1,3 | |
| | Paris green, solid. *See* Copper acetoarsenite, solid | | UN1585 | | | | | | | | |
| E | PCBs. *See* Polychlorinated biphenyls | | | | | | | | | | |
| | Pentaborane | Flammable liquid | UN1380 | Poison and Flammable liquid | None | 173.138 | Forbidden | Forbidden | 1 | 5 | Segregation same as for flammable solids. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| E | Pentachlorophenol (*RQ-10/4.54*) | ORM-E | NA2020 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | *Pentaerythrite tetranitrate. See* Initiating explosive | | | | | | | | | | |
| | *Pentaerythrite tetranitrate, desensitized, wet. See* High explosive | | | | | | | | | | |
| | Pentane | Flammable liquid | UN1265 | Flammable liquid | 173.118 | 173.119 | Forbidden | 10 gallons | 1,3 | 4 | |
| | *Pentolite, dry. See* High explosive | | | | | | | | | | |
| | Peracetic acid solution, *not over 40% peracetic acid and not over 6% hydrogen peroxide* | Organic peroxide | NA2131 | Organic peroxide | 173.223 | 173.223 | 1 pint | 5 pints | 1 | 4 | Shade from radiant heat |
| * | Perchlorate, n.o.s. | Oxidizer | NA1481 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,3 | 1,3 | Stow away from powdered metals |
| | Perchloric acid, *exceeding 50% but* not exceeding 72% strength | Oxidizer | UN1873 | Oxidizer | None | 173.269 | Forbidden | 5 pints | 1 | 5 | Segregation same as for corrosive materials. Stow away from hydrazine. |
| | *Perchloric acid exceeding 72% strength* | Forbidden | | | | | | | | | |
| * | Perchloric acid, not over 50% acid | Oxidizer | UN1802 | Oxidizer | 173.244 | 173.269 | Forbidden | 5 pints | 1 | 1 | Segregation same as for corrosive materials. Stow away from hydrazine |
| | Perchloromethylmercaptan | Poison B | UN1670 | Poison | 173.345 | 173.360 | Forbidden | 10 pounds | 1 | 4 | |
| | Percussion cap | Class C explosive | NA0044 | Explosive C | None | 173.107 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Percussion fuze | Class C explosive | NA0257 | Explosive C | None | 173.105 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| A | Perfluoro-2-butene | ORM-A | NA2422 | None | 173.505 | 173.510 173.605 | 10 gallons | 55 gallons | | | |
| * | Permanganate, n.o.s. | Oxidizer | NA1482 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | Separate from ammonium compounds, hydrogen peroxide, and acids |
| | *Permanganate of potash. See* Potassium permanganate | | UN1490 | | | | | | | | |
| | *Peroxide, organic. See* Organic Peroxide | | | | | | | | | | |

## §172.101 Hazardous Materials Table (cont'd)



| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| W | Pesticide, water reactive, *including but not limited to fungicides, and herbicides, etc., which contain manganese ethylenebisdithiocarbamate* | ORM-C | NA2210 | None | 173.505 | 173.1040 | | | 2 | 2 | Keep dry |
| W | Petroleum coke (*uncalcined*) | ORM-C | | None | 173.505 | 173.1045 | | | 1,2 | 1,2 | Not permitted if temperature of material is at or above 130 deg F |
| | *Petroleum crude. See* Crude oil | | NA1267 | | | | | | | | |
| * | Petroleum distillate | Combustible liquid | UN1268 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Petroleum distillate | Flammable liquid | UN1268 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | |
| | Petroleum ether | Flammable liquid | UN1271 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | |
| | *Petroleum gas, liquefied. See* Liquefied petroleum gas | | UN1075 | | | | | | | | |
| * | Petroleum naphtha | Combustible liquid | UN1255 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Petroleum naphtha | Flammable liquid | UN1255 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| A | Phencapton | ORM-A | NA2783 | None | 173.505 | 173.510 | No limit | No limit | | | |
| | Phenol. *See* Carbolic acid | | UN1671 | | | | | | | | |
| | Phenyldichloroarsine | Poison B | NA2810 | Poison | None | 173.355 | Forbidden | 30 gallons | 1 | 5 | |
| | Phenyltrichlorosilane | Corrosive material | UN1804 | Corrosive | None | 173.280 | Forbidden | 10 gallons | 1 | 1 | Keep dry |
| A | Phenylenediamine, meta or para, solid | ORM-A | UN1673 | None | 173.505 | 173.510 | No limit | No limit | | | |
| E | Phosgene (diphosgene) (*RQ-5000/2270*) | Poison A | UN1076 | Poison gas | None | 173.333 | Forbidden | Forbidden | 1 | 5 | |
| | Phosphine | Poison A | UN2199 | Flammable gas and Poison gas | None | 173.328 | Forbidden | Forbidden | 1 | 5 | |
| E | Phosphoric acid *or* Phosphoric Acid Solution (*RQ-5000/2270*) | Corrosive material | UN1805 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | Glass carboys in hampers not permitted under deck |
| | Phosphoric acid triethyleneimine. *See* Tris-(1-aziridinyl phosphine oxide) | | NA2501 | | | | | | | | |
| | Phosphoric anhydride (*phosphorus pentoxide*) | Corrosive material | NA1807 | Corrosive | None | 173.188 | Forbidden | 100 pounds | 1,2 | 1,2 | Keep dry. Glass bottles not permitted under deck |
| E | Phosphorus, amorphous, red (*RQ-1/.454*) | Flammable solid | UN1338 | Flammable solid | None | 173.189 | Forbidden | 11 pounds | 1,2 | 1,2 | |
| | Phosphorus bromide. *See* Phosphorus tribromide | | UN1808 | | | | | | | | |
| | Phosphorus chloride. *See* Phosphorus trichloride | | UN1809 | | | | | | | | |
| | Phosphorus heptasulfide | Flammable solid | UN1339 | Flammable solid | None | 173.225 | Forbidden | 10 pounds | 1,2 | 1 | Separate from oxidizing materials |
| | Phosphorus oxybromide | Corrosive material | UN1939 | Corrosive | None | 173.271 | Forbidden | 1 quart | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| E | Phosphorus oxychloride (*RQ-5000/2270*) | Corrosive material | UN1810 | Corrosive | None | 173.271 | Forbidden | 1 quart | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| | Phosphorus pentachloride, solid | Corrosive material | UN1806 | Corrosive | None | 173.191 | Forbidden | 5 pounds | 1 | 1 | Keep dry |
| E | Phosphorus pentasulfide (*RQ-1000/454*) | Flammable solid | UN1340 | Flammable solid and Dangerous when wet | None | 173.225 | Forbidden | 11 pounds | 1,2 | 1,2 | Separate from oxidizing material |
| | Phosphorus sesquisulfide | Flammable solid | UN1341 | Flammable solid and Dangerous when wet | None | 173.225 | Forbidden | 11 pounds | 1,2 | 1 | Separate from oxidizing materials |
| | Phosphorus tribromide | Corrosive material | UN1808 | Corrosive | None | 173.270 | Forbidden | 1 quart | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| E | Phosphorus trichloride (*RQ-5000/2270*) | Corrosive material | UN1809 | Corrosive | None | 173.271 | Forbidden | 1 quart | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| | Phosphorus trisulfide | Flammable solid | UN1343 | Flammable solid | None | 173.225 | Forbidden | 10 pounds | 1,2 | 1 | Separate from oxidizing materials |
| E | Phosphorus, white *or* yellow, dry (*RQ-1/.454*) | Flammable solid | UN1381 | Flammable solid and Poison | None | 173.190 | Forbidden | Forbidden | 1,2 | 5 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| E | Phosphorus, white *or* yellow, in water (*RQ-1/.454*) | Flammable solid | UN1381 | Flammable solid and Poison | None | 173.190 | Forbidden | 25 pounds | 1,2 | 5 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| | Phosphoryl chloride. *See* Phosphorus oxychloride | | UN1810 | | | | | | | | |
| | *Photographic film. See* Film | | | | | | | | | | |
| | *Photographic flash powder. See* Fireworks, special *or* Low explosives | | | | | | | | | | |
| | *Picrate, dry. See* High explosive | | | | | | | | | | |
| | *Picrate of ammonia. See* High explosive | | | | | | | | | | |
| | *Picric acid, dry. See* High explosive | | | | | | | | | | |
| | Picric acid, wet, with not less than 10% water | Flammable solid | NA1344 | Flammable solid | None | 173.192 173.193 | 1 pound | 25 pounds | 1 | 5 | Under deck stowage permitted on cargo vessels if wet with more than 30% water. Stow away from heavy metals and their compounds |
| | *Picric acid, wet with not less than 10% water, over 25 pounds. See* High explosive | | | | | | | | | | |
| | Pinane hydroperoxide solution *not over 45% peroxide.* | Organic peroxide | NA2162 | Organic peroxide | 173.153 | 173.224 | 1 quart | 1 quart | 1,2 | 4 | |
| | Pine oil | Combustible liquid | UN1272 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Pinwheels. *See* Fireworks, common | | | | | | | | | | |
| | Pivaloyl chloride. *See* Trimethyl acetylchloride | | UN2438 | | | | | | | | |
| * | Plastic solvent, n.o.s. | Combustible liquid | NA1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Plastic solvent, n.o.s. | Flammable liquid | NA1993 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |

30 **§172.101 Hazardous Materials Table (cont'd)**

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| * | Plutonium nitrate solution | Radioactive material | NA9185 | Radioactive (See Sec. 172.403) | 173.393 | 173.396 | | | 1,2 | 1,2 | |
| | Poisonous liquid, n.o.s. *or* Poison B, liquid, n.o.s. | Poison B | NA2810 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1 | |
| | Poisonous liquid *or* gas, n.o.s. | Poison A | NA9035 | Poison gas | None | 173.328 | Forbidden | Forbidden | 1 | 5 | |
| | Poisonous solid, n.o.s. *or* Poison B, solid, n.o.s. | Poison B | NA2811 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1 | |
| * | Polish, metal, stove, furniture *or* wood, liquid | Combustible liquid | NA1142 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Polish, metal, stove, furniture *or* wood, liquid | Flammable liquid | NA1142 | Flammable liquid | 173.118 | 173.129 | 1 quart | 55 gallons | 1,2 | 1 | |
| E | Polychlorinated biphenyls (*RQ-10/4.54*) | ORM-E | UN2315 | None | None | 173.510 | No limit | No limit | 1,2 | 1,2 | If stowed under deck, must be stowed in a recoverable location. |
| * | *Polymerizable material* | | | | 173.21 | | | | | | |
| E | Potassium arsenate, solid (*RQ-1000/454*) | Poison B | UN1677 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| E | Potassium arsenite, solid (*RQ-1000/454*) | Poison B | UN1678 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| * | Potassium bifluoride solution. *See* Potassium hydrogen fluoride solution | | UN1811 | | | | | | | | |
| | Potassium bromate | Oxidizer | UN1484 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | Separate from ammonium compounds. Stow away from powdered metals. |
| | Potassium chlorate (*potash chlorate*) | Oxidizer | UN1485 | Oxidizer | 173.153 | 173.168 | 25 pounds | 100 pounds | 1,2 | 1,2 | Separate from ammonium compounds. Stow away from powdered metals. |
| E | Potassium chromate (*RQ-1000/454*) | ORM-E | NA9142 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Potassium cyanide, solid (*RQ-10/4.54*) | Poison B | UN1680 | Poison | 173.370 | | 25 pounds | 200 pounds | 1,2 | 1,2 | Stow away from acids |
| *E | Potassium cyanide solution (*RQ-10/4.54*) | Poison B | UN1680 | Poison | 173.345 | 173.352 | 1 quart | 55 gallons | 1,2 | 1,2 | Stow away from acids |
| | *Potassium dichloro isocyanurate. See* Potassium dichloro-s-triazinetrione | | NA2465 | | | | | | | | |
| | Potassium dichloro-s-triazinetrione, *dry (containing more than 39% available chlorine)* | Oxidizer | NA2465 | Oxidizer | 173.153 | 173.217 | 50 pounds | 100 pounds | 1,2 | 1,2 | |
| EA | Potassium dichromate (*RQ-1000/454*) | ORM-A | NA1464 | None | 173.505 | 173.510 | No limit | No limit | | | |
| A | Potassium fluoride | ORM-B | UN1812 | None | 173.505 | 173.510 | No limit | No limit | | | |
| * | Potassium fluoride solution | Corrosive material | UN1812 | Corrosive | 173.244 | 173.249 | 1 quart | 5 gallons | 1,2 | 1,2 | |
| | Potassium hydrate. *See* Potassium hydroxide | | NA1814 | | | | | | | | |
| * | Potassium hydrogen fluoride solution | Corrosive material | NA1811 | Corrosive | 173.244 | 173.249 | 1 quart | 5 gallons | 1,2 | 1,2 | |
| A | Potassium hydrogen sulfate, solid | ORM-B | UN2509 | None | 173.505 | 173.510<br>173.800 | 25 pounds | 100 pounds | | | |
| E | Potassium hydroxide, dry solid, flake, bead, *or* granular (*RQ-1000/454*) | Corrosive material | NA1813 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry. Do not stow with metals or alloys such as brass, copper, tin, zinc, aluminum, solder, or lead |
| *E | Potassium hydroxide, liquid *or* solution (*RQ-1000/454*) | Corrosive material | UN1814 | Corrosive | 173.244 | 173.249 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| * | Potassium hypochlorite solution. *See* Hypochlorite solutions containing more than 7% available chlorine by weight | | NA1791 | | | | | | | | |
| A | Potassium metabisulfite | ORM-B | | None | 173.505 | 173.510 | No limit | No limit | | | |
| | Potassium, metal | Flammable solid | UN2257 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 25 pounds | 1,2 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |
| | Potassium, metal, liquid alloy | Flammable solid | UN1420 | Flammable solid and Dangerous when wet | None | 173.202 | Forbidden | 1 pound | 1,2 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |
| | Potassium nitrate | Oxidizer | UN1486 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| | Potassium nitrate mixed (*fused*) with sodium nitrite | Oxidizer | UN1487 | Oxidizer | 173.153 | 173.183 | 25 pounds | 100 pounds | 1,2 | 1,2 | Separate from ammonium compounds and cyanides. Stow away from foodstuffs |
| | Potassium nitrite | Oxidizer | UN1488 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | Separate from ammonium compounds and cyanides. Stow away from foodstuffs |
| | Potassium perchlorate | Oxidizer | UN1489 | Oxidizer | 173.153 | 173.219 | 25 pounds | 100 pounds | 1,3 | 1,3 | Stow away from powdered metals |
| E | Potassium permanganate (*RQ-100/45.4*) | Oxidizer | UN1490 | Oxidizer | 173.153 | 173.154<br>173.194 | 25 pounds | 100 pounds | 1,2 | 1,2 | Separate from ammonium compounds and hydrogen peroxide |
| | Potassium peroxide | Oxidizer | UN1491 | Oxidizer | None | 173.154 | Forbidden | 100 pounds | 1,2 | 1,2 | Keep dry |
| | Potassium sulfide | Flammable solid | NA1382 | Flammable solid | 173.153 | 173.207 | 25 pounds | 300 pounds | 1,2 | 1,2 | Separate from liquid acids, flammable gases or liquids, oxidizing materials or organic peroxides |
| | *Pressurized product. See* Compressed gas, n.o.s. | | | | | | | | | | |
| | *Primer, detonating. See* Detonating primer | | | | | | | | | | |
| | *Primer. See* Cannon primer, combination primer, or small-arm primer | | | | | | | | | | |
| | *Projectile, explosive. See* Explosive projectile | | | | | | | | | | |
| | *Projectile, gas, nonexplosive. See Chemical ammunition, containing Poison or Irritating Material* | | | | | | | | | | |
| | *Projectile, gas, smoke, or incendiary, with burster or booster with or without detonating fuze. See* Explosive projectile | | | | | | | | | | |
| | *Projectile, illuminating, incendiary or smoke, with expelling charge but without bursting charge. See* Fireworks, special | | | | | | | | | | |
| | *Projectile, sand-loaded, empty or solid. See* 173.55 | | | | | | | | | | |
| | Propane *or* Liquefied petroleum gas. *See* Liquefied petroleum gas | | UN1978 | | | | | | | | |
| E | Propargite (*RQ-10/4.54*) | ORM-E | NA2765 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| * | Propellant explosive | Class A explosive | | Explosive A | None | 173.64 | Forbidden | Forbidden | 6 | 5 | |
| | Propellant explosive in water (*Smokeless powder*) | Class B explosive | | Explosive B | None | 173.93 | Forbidden | Forbidden | 1,3 | 5 | Magazine stowage authorized |

## §172.101 Hazardous Materials Table (cont'd)



| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | Propellant explosive in water, unstable, condemned, *or* deteriorated (*smokeless powder*) | Class B explosive | | Explosive B | None | 173.93 | Forbidden | Forbidden | 1,3 | 5 | Magazine stowage authorized |
| * | Propellant explosive, liquid | Class B explosive | | Explosive B | None | 173.93 | Forbidden | 10 pounds | 1,2 | 5 | Magazine stowage authorized |
| * | Propellant explosive, solid | Class B explosive | | Explosive B | None | 173.93 | Forbidden | 10 pounds | 1,3 | 5 | Magazine stowage authorized |
| | Propellant explosive (*solid, Class B, and small-arms primer*). *See* Propellant | | | | | | | | | | |
| | Propionaldehyde | Flammable liquid | UN1275 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| E | Propionic acid (*RQ-5000/2270*) | Corrosive material | UN1848 | Corrosive | 173.244 | 173.245 | 1 quart | 5 gallons | 1,2 | 1,2 | Separated by a complete compartment or hold from organic peroxides |
| *E | Propionic acid solution (*RQ-5000/2270*) | Corrosive material | NA1848 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | Separated by a complete compartment or hold from organic peroxides |
| E | Propionic anhydride (*RQ-5000/2270*) | Corrosive material | UN2496 | Corrosive | 173.244 | 173.245 | 1 quart | 1 quart | 1,2 | 1 | Keep dry |
| | Propyl acetate | Flammable liquid | UN1276 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Propyl alcohol. *See* Alcohol, n.o.s. | | UN1274 | | | | | | | | |
| | Propyl chloride | Flammable liquid | UN1278 | Flammable liquid | None | 173.119 | Forbidden | 10 gallons | 1,3 | 5 | |
| | Propyl formate | Flammable liquid | UN1281 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Propyl mercaptan | Flammable liquid | UN2704 | Flammable liquid | None | 173.141 | Forbidden | 10 gallons | 1,2 | 5 | |
| | Propyl trichlorosilane | Corrosive material | UN1816 | Corrosive | None | 173.280 | Forbidden | 10 gallons | 1 | 1 | Keep dry |
| | Propylamine | Flammable liquid | UN1277 | Flammable liquid | None | 173.119 | Forbidden | 10 gallons | 1,3 | 5 | |
| | Propylene diamine | Flammable liquid | UN2258 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| E | Propylene dichloride (*RQ-5000/2270*) | Flammable liquid | UN1279 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Propylene imine, inhibited | Flammable liquid | UN1921 | Flammable liquid | None | 173.139 | Forbidden | 5 pints | 1,2 | 1 | |
| | Propylene *or* Liquefied petroleum gas. *See* Liquefied petroleum gas | | UN1077 | | | | | | | | |
| E | Propylene oxide (*RQ-5000/2270*) | Flammable liquid | UN1280 | Flammable liquid | 173.118 | 173.119 | Forbidden | 1 gallon | 1,3 | 4 | |
| | *Prussic acid.* *See* Hydrocyanic acid (*prussic*), liquid *or* unstabilized | | | | | | | | | | |
| E | Pyrethrins (*RQ-1000/454*) | ORM-E | NA9184 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Pyridine | Flammable liquid | UN1282 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Pyrophoric liquid, *or* Pyroforic liquids, n.o.s. | Flammable liquid | UN2845 | Flammable liquid | None | 173.134 | Forbidden | Forbidden | 1 | 5 | Shade from radiant heat. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| | Pyrosulfuryl chloride | Corrosive material | UN1817 | Corrosive | 173.244 | 173.247 | 1 quart | 1 quart | 1 | 4 | Keep dry. Glass carboys not permitted on passenger vessels |
| | Pyroxylin plastic scrap | Flammable solid | NA2006 | Flammable solid | None | 173.195 | Forbidden | Forbidden | 1 | 5 | Shade from radiant heat |
| | Pyroxylin plastics, rods, sheets, rolls, or tubes | Flammable solid | NA2006 | Flammable solid | 173.197 | | 50 pounds | 350 pounds | 1,3 | 1 | |
| * | Pyroxylin solution | Combustible liquid | NA2060 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Pyroxylin solution | Flammable liquid | NA2060 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Pyroxylin solvent, n.o.s. | Combustible liquid | NA2060 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Pyroxylin solvent, n.o.s. | Flammable liquid | NA2060 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Pyrrolidine | Flammable liquid | UN1922 | Flammable liquid | 173.118 | 173.119 | Forbidden | 10 gallons | 1,2 | 1 | |
| | Quicklime. *See* Calcium oxide | | NA1910 | | | | | | | | |
| E | Quinoline (*RQ-1000/454*) | ORM-E | UN2656 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Radioactive device, n.o.s. | Radioactive material | UN2909 | None | 173.391 | | | | 1,2 | 1 2 | |
| * | Radioactive material, fissile, n.o.s. | Radioactive material | UN2918 | Radioactive | 173.393 | 173.396 | | | 1,2 | 1,2 | |
| * | Radioactive material, limited quantity, n.o.s. | Radioactive material | UN2910 | None | 173.391 | | | | 1,2 | 1,2 | |
| * | Radioactive material, low specific activity *or* LSA, n.o.s. | Radioactive material | UN2912 | Radioactive | 173.392 | 173.393 | | | 1,2 | 1,2 | |
| * | Radioactive material, n.o.s. | Radioactive material | NA9181 | Radioactive | 173.393 | 173.395 | | | 1,2 | 1,2 | |
| * | Radioactive material, special form, n.o.s. | Radioactive material | NA9182 | Radioactive | 173.393 | 173.394 | | | 1,2 | 1,2 | |
| | Rags, oily | Flammable solid | UN1856 | Flammable solid | None | 173.199 | Forbidden | Forbidden | 1,2 | 1,2 | Keep dry. Separate from flammable gases, or liquids, oxidizing materials, or organic peroxides |
| | Rags, wet | Flammable solid | NA1325 | Flammable solid | None | 173.200 | Forbidden | Forbidden | 1 | 1 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| | *Railway Fusee.* *See* Fusee | | | | | | | | | | |
| | Railway torpedo. *See* Torpedo, railway | | | | | | | | | | |
| | Range oil. *See* Fuel oil | | NA1993 | | | | | | | | |
| * | *Reducing compound, paint, varnish, lacquer, etc.* *See* Compound, lacquer, paint *or* varnish, etc., removing, reducing, *or* thinning, liquid | | | | | | | | | | |
| | Refrigerant gas. *See* Dispersant Gas | | UN1078 | | | | | | | | |
| * | Refrigerating machine | Nonflammable gas | UN2857 | Nonflammable gas | 173.306 | | No limit | No limit | 1,3 | 1,3 | |

32 **§172.101 Hazardous Materials Table (cont'd)**

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| * | Refrigerating machine | Flammable gas | NA1954 | Flammable gas | 173.306 | | No limit | No limit | 1,3 | 1,3 | |
| * | Refrigerating machine | Flammable liquid | NA1993 | Flammable liquid | 173.130 | 173.306 | No limit | No limit | 1,2 | 1 | |
| * | *Removing compound, paint, varnish, lacquer, etc. See* Compound, lacquer, paint, *or* varnish, etc., removing, reducing, *or* thinning, liquid | | | | | | | | | | |
| * | Resin solution (*resin compound, liquid*) | Combustible liquid | NA2868 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Resin solution (*resin compound, liquid*) | Flammable liquid | NA1866 | Flammable liquid | 173.118 | 173.119 | 1 quart | 55 gallons | 1,2 | 1 | |
| E | Resorcinol (*RQ-5000/2270*) | ORM-E | NA9186 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | *Rifle grenade. See* Grenade, hand or rifle, explosive | | | | | | | | | | |
| | *Rifle powder. See* Propellant explosive, or Black powder | | | | | | | | | | |
| | Road asphalt *or* tar, liquid *See* Asphalt, cut back | | NA1993 | | | | | | | | |
| | Road asphalt *or* tar (*when heated to or above its flash point*). *See* Asphalt | | NA1268 | | | | | | | | |
| * | Road oil | Combustible liquid | NA1268 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Rocket ammunition with empty projectile | Class B explosive | | Explosive B | None | 173.90 | Forbidden | Forbidden | 1,3 | 5 | |
| | Rocket ammunition with explosive projectile | Class A explosive | | Explosive A | None | 173.57 | Forbidden | Forbidden | 6 | 5 | |
| | Rocket ammunition with gas projectile | Class A explosive | | Explosive A | None | 173.57 | Forbidden | Forbidden | 6 | 5 | |
| | Rocket ammunition with illuminating projectile | Class A explosive | | Explosive A | None | 173.57 | Forbidden | Forbidden | 6 | 5 | |
| | Rocket ammunition with incendiary projectile | Class A explosive | | Explosive A | None | 173.57 | Forbidden | Forbidden | 6 | 5 | |
| | Rocket ammunition with inert loaded projectile | Class B explosive | | Explosive B | None | 173.90 | Forbidden | Forbidden | 1,3 | 5 | |
| | Rocket ammunition with smoke projectile | Class A explosive | | Explosive A | None | 173.57 | Forbidden | Forbidden | 6 | 5 | |
| | Rocket ammunition with solid projectile | Class B explosive | | Explosive B | None | 173.90 | Forbidden | Forbidden | 1,3 | 5 | |
| | *Rocket body, with electric primer or electric squib, See* 173.55 | | | | | | | | | | |
| | Rocket engine, liquid | Class B explosive | | Explosive B | None | 173.95 | Forbidden | Forbidden | 1,2 | 5 | Magazine stowage authorized |
| | *Rocket fireworks. See* Fireworks, common | | | | | | | | | | |
| | Rocket head. *See* Explosive projectile | | | | | | | | | | |
| * | Rocket motor | Class A explosive | | Explosive A | None | 173.79 | Forbidden | Forbidden | 6 | 5 | |
| * | Rocket motor | Class B explosive | | Explosive B | None | 173.92 | Forbidden | 550 pounds | 1,3 | 5 | |
| | *Roman candle. See* Fireworks, common | | | | | | | | | | |
| W | Rosin (*colaphony*) *or* Resin | ORM-C | | None | 173.505 | 173.1060 | | | 1,2 | 1,2 | |
| * | Rough ammoniate tankage (*7% or more moisture content*) | Flammable solid | NA1325 | Flammable solid | None | 173.210 | Forbidden | Forbidden | 1,2 | 1,2 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides. Temperature of tankage must not exceed 100 deg F |
| * | Rough ammoniate tankage (*less than 7% moisture content*) | Flammable solid | NA1325 | Flammable solid | None | 173.210 | Forbidden | Forbidden | 1 | 5 | |
| W | Rubber curing compound (*solid*) | ORM-C | | None | 173.505 | 173.1065 | | | 1,2 | 1,2 | |
| | Rubber scrap *or* rubber buffings | Flammable solid | NA1345 | Flammable solid | 173.153 | 173.201 | 10 pounds | 10 pounds | 1,2 | 1,2 | |
| * | Rubber shoddy, regenerated rubber, *or* reclaimed | Flammable solid | NA1345 | Flammable solid | 173.153 | 173.201 | 10 pounds | 10 pounds | 1,2 | 1,2 | |
| | Rubidium metal | Flammable solid | UN1423 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 225 pounds | 1,2 | 5 | Segregation same as for flammable solid labeled Dangerous When Wet |
| | Rubidium metal, in cartridges | Flammable solid | NA1423 | Flammable solid and Dangerous when wet | 173.206 | | 1 pound | 25 pounds | 1,2 | 4 | Segregation same as for flammable solid labeled Dangerous When Wet |
| | Rum, denatured | Flammable liquid | NA1992 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | Rust preventive coating | Combustible liquid | NA1142 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | Safety fuse. *See* Fuse, safety | | UN0105 | | | | | | | | |
| | Safety squib | Class C explosive | NA0206 | Explosive C | None | 173.106 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | *Salute. See* Fireworks common *or* special | | | | | | | | | | |
| | Sand acid. *See* Hydrofluorosilicic acid | | UN1778 | | | | | | | | |
| W | Sawdust (*when dry, clean, and free from oil*) | ORM-C | | None | 173.505 | 173.1070 | | | 1,2 | 1,2 | Keep dry |
| | Selenic acid, liquid | Corrosive material | UN1905 | Corrosive | None | 173.245 | Forbidden | 5 pints | 1,2 | 1,2 | |
| E | Selenium oxide (*RQ-1000/454*) | Poison B | NA2811 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 2 | 2 | |
| | Self-lighting cigarette | Flammable solid | NA1325 | Flammable solid | 173.21 | | Fobidden | Forbidden | 1,2 | 1,2 | Keep dry |
| | Self propelled vehicle. *See* Motor vehicle | | | | | | | | | | |
| | *Shaped charge, commercial. See* High explosive 173.65(h) | | | | | | | | | | |
| | Shell, fireworks. *See* Fireworks, common *or* special | | | | | | | | | | |
| * | Shellac. *See* Paint, enamel, lacquer, stain, shellac, varnish, etc. | | UN1263 | | | | | | | | |
| | *Ship, distress signal. See* Fireworks, special | | | | | | | | | | |

## §172.101 Hazardous Materials Table (cont'd)



| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | Signal flare | Class C explosive | NA0191 | Explosive C | None | 173.108 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Silicofluoric acid. *See* Hydrofluorosilicic acid | | UN1778 | | | | | | | | |
| | Silicon chloride *or* silicon tetrachloride | Corrosive material | UN1818 | Corrosive | 173.244 | 173.247 | 1 quart | 1 gallon | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| | Silicon chrome, exothermic. *See* Exothermic ferrochrome | | | | | | | | | | |
| | Silicon tetrafluoride | Nonflammable gas | UN1859 | Nonflammable gas | 173.306 | 173.302 | Forbidden | 300 pounds | 1 | 4 | Stow away from foodstuffs |
| | Silver cyanide | Poison B | UN1684 | Poison | 173.370 | | 25 pounds | 200 pounds | 1,2 | 1,2 | Stow away from acids |
| E | Silver nitrate (*RQ-1/.454*) | Oxidizer | UN1493 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | Stow away from foodstuffs |
| | *Sisal. See* Fibers | | | | | | | | | | |
| * | *Sludge acid. See* Acid, sludge | | UN1906 | | | | | | | | |
| | Small arms ammunition | Class C explosive | NA0012 | None | 173.101 | | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Small arms ammunition, irritating (*tear gas*) cartridge | Class C explosive | NA0301 | Irritant | None | 173.101 | Forbidden | 150 pounds | 1,3 | 1,3 | |
| | Small arms primer | Class C explosive | NA0378 | Explosive C | None | 173.107 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Smoke candle | Class C explosive | NA0197 | Explosive C | None | 173.108 | 50 pounds | 200 pounds | 1,3 | 1,3 | |
| | *Smoke generator. See Chemical ammunition, Poison A or B Material* | | | | | | | | | | |
| | Smoke grenade | Class C explosive | NA0197 | Explosive C | None | 173.108 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Smoke pot | Class C explosive | NA0197 | Explosive C | None | 173.108 | 50 pounds | 200 pounds | 1,3 | 1,3 | |
| | *Smoke projectile with bursting charge. See* Explosive projectile | | | | | | | | | | |
| | *Smoke projectile with expelling charge but without bursting charge. See* Fireworks, special | | | | | | | | | | |
| | Smoke signal | Class C explosive | NA0197 | Explosive C | None | 173.108 | 50 pounds | 200 pounds | 1,3 | 1,3 | |
| | *Smokeless powder for cannon or small arms. See* Propellant explosive, Class A *or* B | | | | | | | | | | |
| | Smokeless powder for small arms (*100 pounds or less*) | Flammable solid | NA1325 | Flammable solid | 173.88 | 173.197a | Forbidden | Forbidden | 1,3 | 1,3 | Segregation same as for explosives |
| | *Soda amatol. See* High explosive | | | | | | | | | | |
| * | Soda lime, solid | Corrosive material | NA1907 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry |
| A | Sodium aluminate, solid | ORM-B | UN2812 | None | 173.505 | 173.510 173.800 | 25 pounds | 100 pounds | | | |
| * | Sodium aluminate solution | Corrosive material | UN1819 | Corrosive | 173.244 | 173.249 | 1 quart | 5 gallons | 1,2 | 1,2 | |
| | Sodium aluminum hydride | Flammable solid | UN2835 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 25 pounds | 1,2 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |
| | Sodium amide | Flammable solid | UN1425 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 25 pounds | 1,2 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |
| E | Sodium arsenate (*RQ-1000/454*) | Poison B | UN1685 | Poison | 173.364 | 173.365 173.368 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| *E | Sodium arsenite (*solution*) liquid (*RQ-1000/454*) | Poison B | UN1686 | Poison | 173.345 | 173.346 | 1 quart | 55 gallons | 1,2 | 1,2 | |
| | Sodium azide | Poison B | UN1687 | Poison | 173.364 | 173.375 | 50 pounds | 100 pounds | 1,2 | 1,2 | Stow away from heavy metals, especially lead and its compounds. Stow separate from acids |
| E | Sodium bifluoride, solid (*RQ-5000/2270*) | Corrosive material | UN2439 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 2 | 2 | |
| E | Sodium bifluoride, solution (*RQ-5000/2270*) | Corrosive material | UN2439 | Corrosive | 173.244 | 173.245 | 1 quart | 5 gallons | 2 | 2 | |
| | Sodium bisulfate, solid *or* solution. *See appropriate* Sodium hydrogen sulfate *entry* | | NA1821 | | | | | | | &818 | |
| | Sodium bisulfite, solid. *See* Sodium hydrogen sulfite, solid | | NA2693 | | | | | | | | |
| | Sodium bromate | Oxidizer | UN1494 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | Stow separate from ammonium compounds. Stow away from powdered metals |
| | Sodium chlorate (*soda chlorate*) | Oxidizer | UN1495 | Oxidizer | 173.153 | 173.163 | 25 pounds | 100 pounds | 1,2 | 1,2 | Stow separate from ammonium compounds. Stow away from powdered metals |
| | Sodium chlorite | Oxidizer | UN1496 | Oxidizer | None | 173.160 | Forbidden | 100 pounds | 1,2 | 1,2 | Stow separate from ammonium compounds. Stow away from powdered metals |
| * | Sodium chlorite solution (*not exceeding 42% sodium chlorite*) | Corrosive material | NA1908 | Corrosive | 173.244 | 173.263 | 1 quart | 4 gallons | 1,2 | 1 | Glass carboys in hampers not permitted under deck |
| E | Sodium chromate (*RQ-1000/454*) | ORM-E | NA9145 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Sodium cyanide, solid (*RQ-10/4.54*) | Poison B | UN1689 | Poison | 173.370 | | 25 pounds | 200 pounds | 1,2 | 1,2 | Stow away from acids |
| *E | Sodium cyanide solution (*RQ-10/4.54*) | Poison B | NA1689 | Poison | 173.345 | 173.352 | 1 quart | 55 gallons | 1,2 | 1,2 | Stow away from acids |
| | Sodium dichloroisocyanurate. *See* Sodium dichloro-s-triazinetrione | | UN2465 | | | | | | | | |
| | Sodium dichloro-s-triazinetrione (*dry, containing more than 39% available chlorine*) | Oxidizer | UN2465 | Oxidizer | 173.153 | 173.217 | 50 pounds | 100 pounds | 1,2 | 1,2 | |
| EA | Sodium dichromate (*RQ-1000/454*) | ORM-A | NA1464 | None | 173.505 | 173.510 | No limit | No limit | | | |
| E | Sodium dodecylbenzenesulfonate (*RQ-1000/454*) | ORM-E | NA9146 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| EA | Sodium fluoride, solid (*RQ-5000/2270*) | ORM-B | UN1690 | None | 173.505 | 173.510 | No limit | No limit | | | |
| *E | Sodium fluoride solution (*RQ-5000/2270*) | Corrosive material | NA1690 | Corrosive | 173.244 | 173.245 | 1 quart | 5 gallons | 1,2 | 1,2 | Stow away from acids |
| | Sodium hydrate. *See* Sodium hydroxide | | UN1824 | | | | | | | | |

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## §172.101 Hazardous Materials Table (cont'd)

| (1) */E/A/W | (2) Hazardous materials descriptions and proper shipping names | (3) Hazard class | (3A) ID Number | (4) Label(s) required (if not excepted) | (5) Packaging (a) Exceptions | (5) Packaging (b) Specific requirements | (6) Maximum net quantity in one package (a) Passenger carrying aircraft or railcar | (6) Maximum net quantity in one package (b) Cargo only aircraft | (7) Water shipments (a) Cargo vessel | (7) Water shipments (b) Passenger vessel | (7) Water shipments (c) Other requirements |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Sodium hydride | Flammable solid | UN1427 | Flammable solid and Dangerous when wet | None | 173.198 | Forbidden | 25 pounds | 1,2 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |
| A | Sodium hydrogen sulfate, solid | ORM-B | UN1821 | None | 173.505 | 173.510 | 25 pounds | 100 pounds | | | |
| * | Sodium hydrogen sulfate solution | Corrosive material | UN2837 | Corrosive | 173.244 | 173.800<br>173.245 | 1 quart | 1 gallon | 1,2 | 1,2 | |
| EA | Sodium hydrogen sulfite, solid (*RQ-5000/2270*) | ORM-B | NA2693 | None | 173.505 | 173.800 | 25 pounds | 100 pounds | | | |
| E | Sodium hydrosulfide, solid (*RQ-5000/2270*) | Flammable solid | UN2318 | Flammable solid | 173.153 | 173.154 | 25 pounds | 100 pounds | 2 | 2 | |
| E | Sodium hydrosulfide, solution (*RQ-5000/2270*) | Corrosive material | UN1760 | Corrosive | 173.244 | 173.245 | 1 quart | 5 gallons | 2 | 2 | |
| | Sodium hydrosulfite (*sodium dithionite*) | Flammable solid | UN1384 | Flammable solid | 173.153 | 173.204 | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry. Below deck stowage in metal drums only. Separate from flammable gases, liquids, oxidizing materials, or organic peroxides |
| E | Sodium hydroxide, dry solid, flake, bead, *or* granular (*RQ-1000/454*) | Corrosive material | UN1823 | Corrosive | 173.244 | 173.245b | 25 pounds | 200 pounds | 1,2 | 1,2 | Keep dry |
| *E | Sodium hydroxide, liquid *or* solution (*RQ-1000/454*) | Corrosive material | UN1824 | Corrosive | 173.244 | 173.249 | 1 quart | 5 gallons | 1,2 | 1,2 | |
| E | *Sodium hypochlorite. See* Hypochlorite solution *or* Hypochlorite solution containing not more than 7% available chlorine | | | | | | | | | | |
| A | Sodium metabisulfite | ORM-B | | None | 173.505 | 173.510 | No limit | No limit | | | |
| E | Sodium, metal dispersion in organic solvent (*RQ-1000/454*) | Flammable solid | UN1429 | Flammable solid and Dangerous when wet | None | 173.230 | Forbidden | 10 pounds | 1,2 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |
| E | Sodium, metal liquid alloy (*RQ-1000/454*) | Flammable solid | NA1421 | Flammable solid and Dangerous when wet | None | 173.202 | Forbidden | 1 pound | 1,2 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |
| E | Sodium, metal *or* metallic (*RQ-1000/454*) | Flammable solid | UN1428 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 25 pounds | 1,2 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |
| E | Sodium methylate, alcohol mixture (*RQ-1000/454*) | Combustible liquid | NA1289 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| E | Sodium methylate, alcohol mixture (*RQ-1000/454*) | Flammable liquid | NA1289 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| E | Sodium methylate, alcohol mixture (*RQ-1000/454*) | Corrosive material | NA1289 | Corrosive | 173.244 | 173.245 | 1 quart | 1 quart | 1,2 | 1,2 | |
| E | Sodium methylate, dry (*RQ-1000/454*) | Flammable solid | UN1431 | Flammable solid | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1 | Segregation same as for flammable solids labeled Dangerous When Wet |
| | Sodium monoxide, solid | Corrosive material | UN1825 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry |
| | Sodium nitrate | Oxidizer | UN1498 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| | *Sodium nitrate bags. See* Bags, sodium nitrate, empty and unwashed | | | | | | | | | | |
| | Sodium nitrite mixed (*fused*) with potassium nitrate | Oxidizer | UN1487 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | Stow separate from ammonium compounds and cyanides |
| | Sodium nitrite mixture (*sodium nitrate, sodium nitrite, and potassium nitrate*) | Oxidizer | NA1487 | Oxidizer | 173.153 | 173.234 | 25 pounds | 100 pounds | 1,2 | 1,2 | Stow separate from ammonium compounds and cyanides |
| E | Sodium nitrite (*RQ-100/45.4*) | Oxidizer | UN1500 | Oxidizer | 173.153 | 173.234 | 25 pounds | 100 pounds | 1,2 | 1,2 | Stow separate from ammonium compounds and cyanides. Bagged material not permitted on passenger vessels |
| A | Sodium pentachlorophenate | ORM-A | UN2567 | None | 173.505 | 173.510 | No limit | No limit | | | |
| | Sodium perchlorate | Oxidizer | UN1502 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,3 | 1,3 | Stow away from powdered metals |
| | Sodium permanganate | Oxidizer | UN1503 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | Separate from ammonium compounds and hydrogen peroxide |
| | Sodium peroxide | Oxidizer | UN1504 | Oxidizer | None | 173.187 | Forbidden | 100 pounds | 1,2 | 1 | Keep dry. Stow away from powdered metals, permanganates, combustible packing of other cargo, and combustible foodstuffs |
| | Sodium phenolate, solid | Corrosive material | UN2497 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| E | Sodium phosphate, dibasic (*RQ-5000/2270*) | ORM-E | UN9147 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Sodium phosphate, tribasic (*RQ-5000/2270*) | ORM-E | UN9148 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Sodium phosphide | Flammable solid | UN1432 | Flammable solid and Dangerous when wet | None | 173.154 | Forbidden | 25 pounds | 1 | 5 | |
| | Sodium picramate, wet (*with at least 20% water*) | Flammable solid | UN1349 | Flammable solid | None | 173.205 | Forbidden | 25 pounds | 1,2 | 5 | Stow away from heavy metals, especially lead, and its compounds |
| | Sodium potassium alloy | Flammable solid | UN1422 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 25 pounds | 1,2 | 5 | Under deck stowage must be readily accessible. Segregation same as for flammable solids labeled Dangerous When Wet |
| E | Sodium selenite (*RQ-1000/454*) | Poison B | NA2630 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 2 | 2 | |
| | Sodium sulfate, acid. *See appropriate* Sodium hydrogen sulfate *entry* | | | | | | | | | | |
| * | Sodium sulfide, anhydrous | Flammable solid | UN1385 | Flammable solid | 173.153 | 173.207 | 25 pounds | 300 pounds | 1,2 | 1,2 | Stow separate from liquid acids. Separate from flammable gases or liquids, oxidizing materials or organic peroxides |
| * | Solvent, n.o.s. | Combustible liquid | NA1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Solvent, n.o.s. | Flammable liquid | NA1993 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| * | *Sparklers. See* Fireworks, common | | | | | | | | | | |
| | *Spent iron mass. See* Iron mass, spent | | NA1376 | | | | | | | | |
| | *Spent iron sponge. See* Iron sponge, spent | | UN1376 | | | | | | | | |
| | *Spent mixed acid. See* Nitrating acid, spent | | NA1826 | | | | | | | | |
| | *Spent sulfuric acid. See* sulfuric acid, spent | | UN1832 | | | | | | | | |

## §172.101 Hazardous Materials Table (cont'd)

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| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | Spirits of nitroglycerin, (*1 to 10%*) | Flammable liquid | NA1204 | Flammable liquid | None | 173.133 | Forbidden | 6 quarts | 1,2 | 5 | Segregation same as for explosives |
| | Spirits of nitroglycerin, not exceeding 1% nitroglycerin by weight | Flammable liquid | NA1204 | Flammable liquid | 173.118 | 173.133 | 1 quart | 6 quarts | 1,2 | 1 | |
| | Spirits of salt. *See* Hydrochloric acid | | UN1789 | | | | | | | | |
| | *Sporting powder. See* Black powder *or* Propellant explosive, solid, Class B explosive | | | | | | | | | | |
| | *Spray starting fluid. See* Engine starting fluid | | | | | | | | | | |
| | *Spreader cartridge. See* Fireworks, special | | | | | | | | | | |
| | *Squib, electric or safety. See* Electric squib *or* Safety squib | | | | | | | | | | |
| * | Stain. *See* Paint, enamel, lacquer, stain, shellac, varnish, etc. | | UN1263 | | | | | | | | |
| | Stannic phosphide | Flammable solid | UN1433 | Flammable solid and Dangerous when wet | None | 173.154 | Forbidden | 25 pounds | 1 | 5 | Segregation same as for flammable solid labeled Dangerous When Wet |
| A | Stannous chloride, solid | ORM-B | NA1759 | None | 173.505 | 173.510 | No limit | No limit | | | |
| * | Starter cartridge | Class B explosive | | Explosive B | None | 173.92 | Forbidden | 200 pounds | 1,3 | 5 | |
| * | Starter cartridge | Class C explosive | NA0276 | Explosive C | None | 173.102 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | *Storage battery wet. See* Battery, electric storage, wet | | | | | | | | | | |
| | Straw. *See* Hay | | UN1327 | | | | | | | | |
| | Strontium arsenite, solid | Poison B | UN1691 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Strontium chlorate | Oxidizer | UN1506 | Oxidizer | 173.153 | 173.163 | 25 pounds | 100 pounds | 1,2 | 1,2 | Stow separate from ammonium compounds. Stow away from powdered metals |
| * | Strontium chlorate, wet | Oxidizer | UN1506 | Oxidizer | 173.153 | 173.163 | 25 pounds | 200 pounds | 1,2 | 1,2 | Stow separate from ammonium compounds. Stow away from powdered metals |
| E | Strontium chromate (*RQ-1000/454*) | ORM-E | NA9149 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Strontium nitrate | Oxidizer | UN1507 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 1,2 | 1,2 | |
| | Strontium peroxide | Oxidizer | UN1509 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry |
| *E | Strychnine salt, solid (*RQ-10/4.54*) | Poison B | UN1692 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| E | Strychnine, solid (*RQ-10/4.54*) | Poison B | UN1692 | Poison | None | 173.377 | Forbidden | 200 pounds | 1,2 | 1,2 | |
| | *Styphnate of lead. See* Initiating explosive | | | | | | | | | | |
| E | Styrene monomer, inhibited (*RQ-1000/454*) | Flammable liquid | UN2055 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Succinic acid peroxide | Organic peroxide | UN2135 | Organic peroxide | 173.153 | 173.157 173.158 | Forbidden | 25 pounds | 1 | 1 | |
| E | Sulfur chloride (*mono and di*) (*RQ-1000/454*) | Corrosive material | UN1828 | Corrosive | None | 173.247 | Forbidden | 1 gallon | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| | Sulfur dioxide | Nonflammable gas | UN1079 | Nonflammable gas | 173.306 | 173.304 173.314 173.315 | Forbidden | 300 pounds | 1,2 | 4 | Stow away from living quarters |
| | Sulfur flower. *See* Sulfur | | | | | | | | | | |
| | Sulfur hexafluoride | Nonflammable gas | UN1080 | Nonflammable gas | 173.306 | 173.304 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| W | Sulfur, solid | ORM-C | UN1350 | None | 173.505 | 173.1080 | | | 1,2 | 1,2 | Protect from sparks and open flame. Stow separate from oxidizing materials. Segregation same as for flammable solids |
| | Sulfur trioxide, stabilized | Corrosive material | UN1829 | Corrosive | 173.244 | 173.273 | Forbidden | 1 gallon | 1,2 | 1,2* | Keep dry. Glass bottles not permitted under deck |
| E | Sulfuric acid (*For fuming sulfuric acid, see Oleum*) (*RQ-1000/454*) | Corrosive material | UN1830 | Corrosive | 173.244 | 173.272 | 1 quart | 1 gallon | 1 | 1 | Keep dry. Under deck stowage is permitted on cargo vessels only in metal drums |
| E | Sulfuric acid, spent (*RQ-1000/454*) | Corrosive material | UN1832 | Corrosive | None | 173.248 | Forbidden | 1 quart | 1 | 1 | Under deck stowage is permitted on cargo vessels only in metal drums |
| | Sulfuric anhydride. *See* Sulfur trioxide, stabilized | | UN1829 | | | | | | | | |
| * | Sulfurous acid | Corrosive material | UN1833 | Corrosive | 173.244 | 173.245 | 2 gallons | 2 gallons | 1,2 | 1 | Glass carboys in hampers not permitted under deck |
| | Sulfuryl chloride | Corrosive material | UN1834 | Corrosive | 173.244 | 173.247 | 1 quart | 1 quart | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| | Sulfuryl fluoride | Nonflammable gas | UN2191 | Nonflammable gas | 173.306 | 173.304 173.314 | 150 pounds | 300 pounds | 1,3 | 1 | |
| | Sulphur. *See* Sulfur | | UN1350 | | | | | | | | |
| | Supplementary charge (explosive) | Class A explosive | | Explosive A | None | 173.69 | Forbidden | Forbidden | 6 | 5 | |
| EA | 2,4,5-T amines, esters, *or* salts. *See* 2,4,5-Trichlorophenoxyacetic acid, amines, esters, *or* salts | | NA2765 | | | | | | | | |
| EA | 2,4,5-T. *See* 2,4,5-Trichlorophenoxyacetic acid. | | NA2765 | | | | | | | | |
| | *Tank car, containing residual phosphorus and filled with water or inert gas. See* 173.190 | | | | | | | | | | |
| | Tank car, empty (*previously used for a hazardous material*), *See* 173.29 | | | | | | | | | | |
| | Tank car, empty (*previously used for a Poison A material*), *See* 172.510 and 173.29 | | | | | | | | | | |
| | Tank, portable, empty (*previously used for a hazardous material*). *See* 172.510, 173.29 and 172.514 | | | | | | | | | | |
| | Tank truck, empty. *See* 172.510, 172.514 and 173.29 | | | | | | | | | | |
| * | Tankage fertilizer | Flammable solid | NA1325 | Flammable solid | None | 173.209 | Forbidden | Forbidden | 1 | 5 | Keep dry. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| * | Tankage, rough ammoniate | Flammable solid | NA1325 | Flammable solid | None | 173.210 | Forbidden | Forbidden | 1 | 5 | Keep dry. Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| | *Tankage. See* Garbage tankage | | | | | | | | | | |
| * | Tar, liquid | Combustible liquid | UN1999 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |

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## §172.101 Hazardous Materials Table (cont'd)

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| * | Tar, liquid | Flammable liquid | UN1999 | Flammable liquid | 173.118 | 173.131 | 1 quart | 10 gallons | 1,2 | 1 | |
| E | TDE (*1,1-dichloro-2,2-bis(para-chlorophenyl) ethane*) (*RQ-1/0.454*) | ORM-A | NA2761 | None | None | 173.510 | 50 pounds | No limit | 2 | 2 | |
| | *Tear gas ammunition. See Chemical ammunition (containing an irritant material)* | | | | | | | | | | |
| | Tear gas candle | Irritating material | UN1700 | Irritant | None | 173.385 | Forbidden | 75 pounds | 1 | 5 | Stow away from living quarters |
| | *Tear gas cartridge. See* Small arms ammunition irritating (*tear gas*) cartridge | | | | | | | | | | |
| | *Tear gas grenade. See* Grenade, tear gas | | | | | | | | | | |
| | *Tertiary alcohol. See* Alcohol, n.o.s. | | | | | | | | | | |
| | Tertiary butyl isopropyl benzene hydroperoxide | Organic peroxide | UN2091 | Organic peroxide | 173.153 | 173.224 | 1 quart | 1 quart | 1,2 | 4 | |
| AW | Tetrachloroethane | ORM-A | UN1702 | None | 173.505 | 173.620 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| A | Tetrachloroethylene *or* Perchloroethylene | ORM-A | UN1897 | None | 173.505 | 173.510 173.605 | 10 gallons | 55 gallons | | | |
| | Tetraethyl dithiopyrophosphate and compressed gas mixture | Poison A | UN1703 | Poison gas | None | 173.334 | Forbidden | Forbidden | 1 | 5 | Shade from radiant heat. Stow away from living quarters. Segregation same as for nonflammable gases |
| | Tetraethyl dithiopyrophosphate, liquid | Poison B | UN1704 | Poison | None | 173.358 | Forbidden | 1 quart | 1 | 5 | |
| | Tetraethyl dithiopyrophosphate mixture, dry | Poison B | UN1704 | Poison | None | 173.377 | Forbidden | 200 pounds | 1 | 5 | |
| | Tetraethyl dithiopyrophosphate mixture, liquid | Poison B | UN1704 | Poison | None | 173.359 | Forbidden | 1 quart | 1 | 5 | |
| E | Tetraethyl lead, liquid (*including flash point for export shipment by water*) (*RQ-100/45.4*) | Poison B | NA1649 | Poison | None | 173.354 | Forbidden | 55 gallons | 1 | 5 | If flash point is 141 deg F. or less, segregation must be the same as for flammable liquids |
| E | Tetraethyl pyrophosphate and compressed gas mixture (*RQ-100/45.4*) | Poison A | UN1705 | Poison gas | None | 173.334 | Forbidden | Forbidden | 1 | 5 | Shade from radiant heat. Stow away from living quarters. Segregation same as for nonflammable gases |
| E | Tetraethyl pyrophosphate, liquid (*RQ-100/45.4*) | Poison B | NA2783 | Poison | None | 173.358 | Forbidden | 1 quart | 1,2 | 5 | |
| E | Tetraethyl pyrophosphate mixture, dry (*RQ-100/45.4*) | Poison B | NA2783 | Poison | None | 173.377 | Forbidden | 200 pounds | 1,2 | 5 | |
| E | Tetraethyl pyrophosphate mixture, liquid (*RQ-100/45.4*) | Poison B | NA2783 | Poison | None | 173.359 | Forbidden | 1 quart | 1,2 | 5 | |
| | Tetrafluoroethylene, inhibited | Flammable gas | UN1081 | Flammable gas | 173.306 | 173.304 | Forbidden | 300 pounds | 1,2 | 1,2 | Stow away from living quarters |
| | 1,2,3,6-Tetrahydrobenzaldehyde | Corrosive material | UN2498 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Tetrahydrofuran | Flammable liquid | UN2056 | Flammable liquid | None | 173.119 | Forbidden | 10 gallons | 1,3 | 5 | |
| | Tetramethylammonium hydroxide, liquid | Corrosive material | UN1835 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| A | Tetramethylmethylenediamine | ORM-A | NA9069 | None | 173.505 | 173.510 | No limit | No limit | | | |
| | Tetranitromethane | Oxidizer | UN1510 | Oxidizer | None | 173.203 | Forbidden | Forbidden | 1 | 5 | Shade from radiant heat. Stow away from foodstuffs |
| | *Tetrazene (guanyl nitrosamino guanyltetrazene). See* Initiating explosive | | | | | | | | | | |
| | *Tetryl. See* High explosive | | | | | | | | | | |
| * | Textile treating compound mixture, liquid | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 173.249a | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Textile waste. *See* Cotton waste | | | | | | | | | | |
| | Textile waste, wet | Flammable solid | UN1857 | Flammable solid | None | 173.211 | Forbidden | Forbidden | 1,2 | 1,2 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| * | Thallium salt, solid, n.o.s. | Poison B | NA1707 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| E | Thallium sulfate, solid (*RQ-1000/454*) | Poison B | NA1707 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Thinner for rust preventive coating. *See* Rust preventive coating | | NA1142 | | | | | | | | |
| | *Thinning compound, paint, varnish, lacquer etc. See* Paint, enamel, lacquer, stain, shellac, varnish, etc. | | UN1263 | | | | | | | | |
| | *Thiocarbonyl-chloride. See* Thiophosgene | | | | | | | | | | |
| | Thioglycolic acid | Corrosive material | UN1940 | Corrosive | 173.244 | 173.245 | 1 quart | 1 gallon | 1,2 | 1,2 | Glass carboys in hampers not permitted under deck |
| | Thionyl chloride | Corrosive material | UN1836 | Corrosive | None | 173.247 | Forbidden | 1 gallon | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| | Thiophosgene | Poison B | UN2474 | Poison | None | 173.356 | Forbidden | 1 gallon | 1 | 5 | Shade from radiant heat |
| | Thiophosphoryl chloride | Corrosive material | UN1837 | Corrosive | None | 173.271 | Forbidden | 1 quart | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| A | Thiram | ORM-A | NA2771 | None | 173.505 | 173.510 | No limit | No limit | | | |
| | Thorium metal, pyrophoric | Radioactive material | NA9170 | Radioactive and Flammable solid | 173.226 | 173.228 | | | 1,2 | 1,2 | |
| | Thorium nitrate | Radioactive material | NA9171 | Radioactive and Oxidizer | 173.392 | 173.393 | | | 1,2 | 1,2 | Separate longitudinally by a complete hold or compartment from explosives |
| | *Time fuze. See* Fuze, time, non-detonating | | | | | | | | | | |
| | Tin chloride, fuming. *See* Tin tetrachloride, anhydrous | | UN1827 | | | | | | | | |
| | Tin perchloride. *See* Tin tetrachloride, anhydrous | | NA1827 | | | | | | | | |
| | Tin tetrachloride, anhydrous | Corrosive material | UN1827 | Corrosive | 173.244 | 173.247 | 1 quart | 1 quart | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| * | Tinning flux. *See* Zinc chloride solution | | NA1840 | | | | | | | | |
| | Titanium metal powder, dry or wet *with less than 20% water* | Flammable solid | NA2546 | Flammable solid | None | 173.208 | Forbidden | 75 pounds | 1,2 | 5 | |
| | Titanium metal powder, wet with 20% or more water | Flammable solid | NA1352 | Flammable solid | None | 173.208 | Forbidden | 150 pounds | 1,2 | 5 | |
| * | Titanium sulfate solution *containing not more than 45% sulfuric acid* | Corrosive material | UN1760 | Corrosive | 173.244 | 173.297 | 1 quart | 1 gallon | 1 | 4 | Shade from radiant heat. Keep dry |

## §172.101 Hazardous Materials Table (cont'd)



| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | Titanium tetrachloride | Corrosive material | UN1838 | Corrosive | 173.244 | 173.247 | 1 quart | 10 gallons | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |
| | Toluene diisocyanate | Poison B | UN2078 | Poison | 173.345 | 173.346 | Forbidden | 55 gallons | 1,3 | 1,3 | Shade from radiant heat |
| | Toluene sulfonic acid, liquid | Corrosive material | NA2584 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| E | Toluene (*toluol*) (*RQ-1000/454*) | Flammable liquid | UN1294 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| A | Toluenediamine | ORM-A | NA1709 | None | 173.505 | 173.510 | No limit | No limit | | | |
| | *Torch. See* Fireworks, common | | | | | | | | | | |
| | Torpedo, railway | Class B explosive | | Explosive B | None | 173.91 | Forbidden | 200 pounds | 1,2 | 1,2 | Passenger vessels in metal lockers only |
| E | Toxaphene (*RQ-1/0.454*) | ORM-A | NA2761 | None | None | 173.510 | 25 pounds | 100 pounds | 2 | 2 | |
| | Toy caps | Class C explosive | NA0337 | Explosive C | None | 173.100 173.109 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Toy propellant device | Class C explosive | NA0336 | Explosive C | None | 173.111 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Toy smoke device | Class C explosive | NA0337 | Explosive C | None | 173.111 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | *Toy torpedo. See* Fireworks, special | | | | | | | | | | |
| E | 2,4,5-TP esters. *See* 2,4,5-Trichlorophenoxypropionic acid esters | | NA2765 | | | | | | | | |
| E | 2,4,5-TP. *See* 2,4,5-Trichlorophenoxypropionic acid | | NA2765 | | | | | | | | |
| | Tracer | Class C explosive | NA0306 | Explosive C | None | 173.105 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Tracer fuze | Class C explosive | NA0306 | Explosive C | None | 173.105 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| | Tractor. *See* Motor vehicle | | | | | | | | | | |
| | Trailer or truck body with refrigeration or heating equipment. *See* Motor vehicle | | | | | | | | | | |
| | Treated paper (*manufactured article properly dried to prevent spontaneous heating*). *See* Oiled material | | | | | | | | | | |
| | Treated textile (*manufactured article properly dried to prevent spontaneous heating*). *See* Oiled material. | | | | | | | | | | |
| E | Trichlorfon (*RQ-1000/454*) | ORM-A | NA2783 | None | None | 173.510 | 25 pounds | 100 pounds | 2 | 2 | |
| | Trichloro-s-triazinetrione *dry, containing over 39% available chlorine* | Oxidizer | UN2468 | Oxidizer | 173.153 | 173.217 | 50 pounds | 100 pounds | 1,3 | 1,3 | Keep dry |
| | (mono-(Trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry (*containing over 39% available chlorine*) | Oxidizer | NA2468 | Oxidizer | 173.153 | 173.217 | 50 pounds | 100 pounds | 1,3 | 1,3 | Keep dry |
| | Trichloroacetic acid, solid | Corrosive material | UN1839 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1 | |
| * | Trichloroacetic acid solution | Corrosive material | UN2564 | Corrosive | 173.244 | 173.245 | 1 quart | 1 quart | 1,2 | 1,2 | Glass carboys in hampers not permitted under deck |
| EA | Trichloroethylene (*RQ-1000/454*) | ORM-A | UN1710 | None | 173.505 | 173.510 173.605 | 10 gallons | 55 gallons | | | |
| E | Trichlorophenol (*RQ-10/4.54*) | ORM-A | NA2020 | None | None | 173.510 | 100 pounds | No limit | 2 | 2 | |
| EA | 2,4,5-Trichlorophenoxyacetic acid (*RQ-100/45.4*) | ORM-A | NA2765 | None | None | 173.510 | 50 pounds | No limit | 2 | 2 | |
| EA | 2,4,5-Trichlorophenoxyacetic acid amines, esters, *or* salts (*RQ-100/45.4*) | ORM-A | NA2765 | None | None | 173.510 | 50 pounds | No limit | 2 | 2 | |
| EA | 2,4,5-Trichlorophenoxypropionic acid (*RQ-100/45.4*) | ORM-A | NA2765 | None | None | 173.510 | 50 pounds | No limit | 2 | 2 | |
| EA | 2,4,5-Trichlorophenoxypropionic acid esters (*RQ-100/45.4*) | ORM-A | NA2765 | None | None | 173.510 | 50 pounds | No limit | 2 | 2 | |
| | Trichlorosilane | Flammable liquid | UN1295 | Flammable liquid | None | 173.136 | Forbidden | 10 gallons | 1 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |
| | Trick matches | Class C explosive | NA0337 | Explosive C | None | 173.111 | Forbidden | Forbiddfen | 1,3 | 1,3 | |
| | Trick noise maker, explosive | Class C explosive | NA0337 | Explosive C | None | 173.111 | 50 pounds | 150 pounds | 1,3 | 1,3 | |
| E | Triethanolamine dodycylbenzenesulfonate (*RQ-1000/454*) | ORM-E | NA9151 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Triethylamine (*RQ-5000/2270*) | Flammable liquid | UN1296 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Trifluorochlorethylene | Flammable gas | UN1082 | Flammable gas | 173.306 | 173.304 173.314 | Forbidden | 10 gallons | 1,2 | 1 | |
| | Trimethyl acetyl chloride | Corrosive material | UN2438 | Corrosive | 173.244 | 173.247 | 1 quart | 1 quart | 1,2 | 1,2 | |
| E | Trimethylamine, anhydrous (*RQ-1000/454*) | Flammable gas | UN1083 | Flammable gas | 173.306 | 173.304 173.314 173.315 | Forbidden | 300 pounds | 1 | 4 | |
| *E | Trimethylamine, aqueous solution (*RQ-1000/454*) | Flammable liquid | NA1297 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | Stow away from mercury and mercury compounds |
| | Trimethylchlorosilane | Flammable liquid | UN1298 | Flammable liquid | None | 173.135 | Forbidden | 10 gallons | 1,2 | 1 | |
| | *Trinitrobenzene, dry. See* High explosive | | | | | | | | | | |
| * | Trinitrobenzene, wet *containing at least 10% water* | Flammable solid | NA1354 | Flammable solid | 173.212 | | 1 pound | 1 pound | 1 | 4 | Stow away from heavy metals and their compounds |
| | *Trinitrobenzoic acid, dry. See* High explosive | | | | | | | | | | |
| * | Trinitrobenzoic acid, wet, *containing at least 10% water* | Flammable solid | NA1355 | Flammable solid | None | 173.192 173.193 | 1 pound | 25 pounds | 1 | 5 | Stow away from heavy metals and their compounds |
| | *Trinitrobenzoic acid, wet, containing at least 10% water, over 25 pounds in one outside packaging. See* High explosives | | | | | | | | | | |
| | *Trinitroresorcinol. See* High explosive | | | | | | | | | | |
| | *Trinitrotoluene, dry. See* High explosive | | | | | | | | | | |
| | Trinitrotoluene, wet *containing at least 10% water* | Flammable solid | NA1356 | Flammable solid | 173.212 | | 1 pound | 1 pound | 1 | 4 | Stow away from heavy metals and their compounds |
| | Tris-(1-aziridinyl) phosphine oxide | Corrosive material | UN2501 | Corrosive | 173.244 | 173.299a | 1 quart | 1 gallon | 1 | 1 | Keep dry. Glass carboys not permitted on passenger vessels |

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## §172.101 Hazardous Materials Table (cont'd)

| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */E/A/W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| | Tungsten hexafluoride | Corrosive material | UN2196 | Corrosive | None | 173.284 | Forbidden | 110 pounds | 1 | 5 | Segregation same as for nonflammable gases. |
| * | Turpentine | Combustible liquid | UN1299 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Turpentine | Flammable liquid | UN1299 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| * | Turpentine substitute | Combustible liquid | UN1300 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| * | Turpentine substitute | Flammable liquid | UN1300 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| W | Twisted jute packing (*rope*) (*treated or untreated*). *See* Oakum | | | | | | | | | | |
| | Uranium hexafluoride, fissile (containing more than 0.7% U-235) | Radioactive material | NA9173 | Radioactive and Corrosive | 173.393 | 173.396 | | | 1,2 | 1,2 | |
| | Uranium hexafluoride, low specific activity (*containing 0.7% or less U-235*) | Radioactive material | NA9174 | Radioactive and Corrosive | 173.392 | 173.393 | | | 1,2 | 1,2 | |
| | Uranium metal, pyrophoric | Radioactive material | NA9175 | Radioactive and Flammable solid | 173.392 | 173.393 173.396 | | | 1,2 | 1,2 | |
| E | Uranyl acetate (*RQ-5000/2270*) | Radioactive material | NA9180 | Radioactive material | 173.391 | 173.395 | Not applicable | Not applicable | 2 | 2 | |
| | Uranyl nitrate hexahydrate solution | Radioactive material | NA9178 | Radioactive and Corrosive | 173.392 | 173.393 173.395 173.396 | | | 1,2 | 1,2 | |
| E | Uranyl nitrate, solid (*RQ-5000/2270*) | Radioactive material | NA9177 | Radioactive and Oxidizer | 173.392 | 173.393 173.396 | | | 1,2 | 1,2 | Separate longitudinally by an intervening hold or compartment from explosives |
| | *Urea nitrate, dry. See* High explosive | | | | | | | | | | |
| * | Urea nitrate, wet *with 10% or more water* | Flammable solid | NA1357 | Flammable solid | None | 173.192 173.193 | 1 pound | 25 pounds | 1,2 | 1,2 | |
| | *Urea nitrate, wet with 10% or more water, over 25 pounds in one outside packaging. See* High explosive | | | | | | | | | | |
| | Urea peroxide | Organic peroxide | NA1511 | Organic peroxide | 173.153 | 173.227 | 2 pounds | 25 pounds | 1 | 4 | Keep dry. Shade from radiant heat |
| | Valeric acid | Corrosive material | NA1760 | Corrosive | 173.244 | 173.245 | 1 quart | 10 gallons | 1,2 | 1,2 | |
| | Valeryl chloride | Corrosive material | UN2502 | Corrosive | 173.244 | 173.245 | 1 quart | 1 gallon | 1,2 | 1,2 | |
| | Vanadium oxytrichloride | Corrosive material | UN2443 | Corrosive | 173.244 | 173.247a | Forbidden | 1 quart | 1 | 4 | Shade from radiant heat |
| | Vanadium oxytrichloride and titanium tetrachloride mixture | Corrosive material | NA2444 | Corrosive | None | 173.245 173.245a | Forbidden | 1 quart | 1 | 4 | Shade from radiant heat |
| E | Vanadium pentoxide (*RQ-1000/454*) | Poison B | NA2862 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 2 | 2 | |
| | Vanadium tetrachloride | Corrosive material | UN2444 | Corrosive | 173.244 | 173.247a | Forbidden | 1 quart | 1 | 4 | Shade from radiant heat |
| E | Vanadyl sulfate (*RQ-1000/454*) | ORM-E | NA9152 NA1168 NA1142 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | *Varnish drier. See* Paint drier, liquid | | | | | | | | | | |
| | *Varnish remover or reducer. See* Compound, lacquer, paint or varnish removing, reducing, or thinning liquid | | | | | | | | | | |
| * | Varnish. *See* Paint, enamel, lacquer, stain, shellac, varnish, etc. | | NA1263 | | | | | | | | |
| | *Varnish thinning compound. See* Compound, lacquer, paint, or varnish removing, reducing, or thinning liquid | | NA1263 | | | | | | | | |
| | Very signal cartridge | Class C explosive | NA0312 | Explosive C | None | 173.108 | 50 pounds | 200 pounds | 1,3 | 1,3 | |
| E | Vinyl acetate (*RQ-1000/454*) | Flammable liquid | UN1301 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Vinyl chloride | Flammable gas | UN1086 | Flammable gas | 173.306 | 173.304 173.314 173.315 | Forbidden | 300 pounds | 1,2 | 4 | Stow away from living quarters |
| | Vinyl ethyl ether, inhibited | Flammable liquid | UN1302 | Flammable liquid | None | 173.119 | Forbidden | 1 gallon | 1,3 | 5 | |
| | Vinyl fluoride, inhibited | Flammable gas | UN1860 | Flammable gas | 173.306 | 173.304 173.314 173.315 | Forbidden | 300 pounds | 1 | 4 | |
| | Vinyl isobutyl ether | Flammable liquid | UN1304 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,2 | 1 | |
| | Vinyl methyl ether | Flammable gas | UN1087 | Flammable gas | 173.306 | 173.304 173.314 | Forbidden | 20 pounds | 1,2 | 1 | Stow away from living quarters |
| | Vinyl trichlorosilane | Flammable liquid | UN1305 | Flammable liquid | None | 173.135 | Forbidden | 10 gallons | 1,2 | 1 | |
| E | Vinylidene chloride, inhibited (*RQ-5000/2270*) | Flammable liquid | UN1303 | Flammable liquid | 173.118 | 173.119 | 1 quart | 10 gallons | 1,3 | 4 | |
| | Vitriol, oil of. *See* Sulfuric acid | | NA1830 | | | | | | | | |
| | *War head. See* Explosive projectile | | | | | | | | | | |
| | Waste paper, wet | Flammable solid | NA1325 | Flammable solid | None | 173.186 | Forbidden | Forbidden | 1,2 | 1,2 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| | Waste textile, wet | Flammable solid | UN1857 | Flammable solid | None | 173.211 | Forbidden | Forbidden | 1,2 | 1,2 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| | Waste wool, wet | Flammable solid | UN1387 | Flammable solid | None | 173.213 | Forbidden | Forbidden | 1,2 | 1,2 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| | *Water pump system tank charged with compressed air or nitrogen* | Nonflammable gas | NA1956 | None | 173.306 | | Forbidden | Forbidden | 1,2 | 1,2 | |
| | Water reactive solid, n.o.s. | Flammable solid | UN2813 | Flammable solid and Dangerous when wet | 173.153 | 173.154 | Forbidden | 25 pounds | 1,2 | 4 | Segregation same as for flammable solids labeled Dangerous When Wet |

## §172.101 Hazardous Materials Table (cont'd)



| (1) | (2) | (3) | (3A) | (4) | (5) Packaging | | (6) Maximum net quantity in one package | | (7) Water shipments | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| */ E/ A/ W | Hazardous materials descriptions and proper shipping names | Hazard class | ID Number | Label(s) required (if not excepted) | (a) Exceptions | (b) Specific requirements | (a) Passenger carrying aircraft or railcar | (b) Cargo only aircraft | (a) Cargo vessel | (b) Passenger vessel | (c) Other requirements |
| * | Water treatment compounds, liquid | Corrosive material | NA1760 | Corrosive | 173.244 | 173.149 | 1 quart | 10 gallons | 1 | 1 | |
| * | Wax, liquid | Combustible liquid | NA1993 | None | 173.118a | None | No limit | No limit | 1,2 | 1,2 | |
| | *Wet hair.* See Hair, wet | | NA1325 | | | | | | | | |
| | Wet textile waste. See Waste textile, wet | | UN1857 | | | | | | | | |
| | White acid (*ammonium bifluoride and hydrochloric acid mixture*) | Corrosive material | NA1760 | Corrosive | 173.244 | 173.264 | 1 quart | 1 gallon | 1 | 1 | |
| * | Wood filler, liquid. See Paint, varnish, lacquer, stain, shellac, enamel, etc. | | NA1263 | | | | | | | | |
| | Wood shavings (*when dry, clean and free from oil*). See Sawdust | | | | | | | | | | |
| | Wool waste. See Cotton waste | | | | | | | | | | |
| | *Wool waste, wet.* See Waste wool, wet | | UN1387 | | | | | | | | |
| | X-ray film. See Film | | | | | | | | | | |
| * | Xenon | Nonflammable gas | UN2036 | Nonflammable gas | 173.306 | 173.302 | 150 pounds | 300 pounds | 1,2 | 1,2 | |
| E | Xylene (*xylol*) (*RQ-1000/454*) | Flammable liquid | UN1307 | Flammable liquid | 173.118 | 173.119 | 1 quart | 1 quart | 1,2 | 1,2 | |
| E | Xylenol (*RQ-1000/454*) | ORM-E | UN2261 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Xylyl bromide | Irritating material | UN1701 | Irritant | None | 173.382 | Forbidden | 75 pounds | 1 | 5 | Stow away from living quarters |
| A | Yeast, active, *in liquid or pressed form* | ORM-C | | None | None | 173.1085 | No limit | No limit | | | |
| E | Zinc acetate (*RQ-1000/454*) | ORM-E | NA9153 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Zinc ammonium chloride (*RQ-5000/2270*) | ORM-E | NA9154 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Zinc ammonium nitrite | Oxidizer | UN1512 | Oxidizer | None | 173.228 | 25 pounds | 100 pounds | 1,3 | 5 | This material may be forbidden in water transportation by certain countries |
| | Zinc arsenate | Poison B | UN1712 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| | Zinc arsenite, solid | Poison B | UN1712 | Poison | 173.364 | 173.365 | 50 pounds | 200 pounds | 1,2 | 1,2 | |
| E | Zinc borate (*RQ-1000/454*) | ORM-E | NA9155 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Zinc bromide (*RQ-5000/2270*) | ORM-E | NA9156 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Zinc carbonate (*RQ-1000/454*) | ORM-E | NA9157 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Zinc chlorate | Oxidizer | UN1513 | Oxidizer | 173.153 | 173.163 | 25 pounds | 100 pounds | 1,2 | 1,2 | Stow separate from ammonium compounds and away from powdered metals |
| E | Zinc chloride, solid (*RQ-5000/2270*) | ORM-E | NA2331 | None | None | 173.510 | No limit | No limit | 1,2 | 1,2 | |
| E | Zinc chloride solution (*RQ-5000/2270*) | Corrosive material | UN1840 | Corrosive | 173.244 | 173.245 | 1 quart | 1 quart | 1,2 | 1,2 | |
| E | Zinc cyanide (*RQ-10/4.54*) | Poison B | UN1713 | Poison | 173.370 | | 25 pounds | 200 pounds | 1,2 | 1,2 | Stow away from acids |
| | *Zinc ethyl.* See Pyrophoric liquids, n.o.s. | | NA1366 | | | | | | | | |
| E | Zinc fluoride (*RQ-1000/454*) | ORM-E | NA9158 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Zinc formate (*RQ-1000/454*) | ORM-E | NA9159 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Zinc hydrosulfite (*RQ-1000/454*) | Flammable solid | NA1931 | Flammable solid | 173.153 | 173.154 | 25 pounds | 100 pounds | 2 | 2 | |
| * | Zinc muriate solution. See Zinc chloride solution | | NA1840 | | | | | | | | |
| E | Zinc nitrate (*RQ-5000/2270*) | Oxidizer | UN1514 | Oxidizer | 173.153 | 173.182 | 25 pounds | 100 pounds | 2 | 2 | |
| | Zinc permanganate | Oxidizer | UN1515 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | Separate from ammonium compounds and hydrogen peroxide |
| | Zinc peroxide | Oxidizer | UN1516 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 1,2 | 1,2 | Keep dry |
| E | Zinc phenolsulfonate (*RQ-5000/2270*) | ORM-E | NA9160 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Zinc phosphide (*RQ-1000/454*) | Flammable solid | UN1714 | Flammable solid and Poison | 173.153 | 173.154 | Forbidden | 25 pounds | 2 | 2 | Keep away from oxidizing agents. |
| E | Zinc silicofluoride (*RQ-5000/2270*) | ORM-E | UN2855 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| E | Zinc sulfate (*RQ-1000/454*) | ORM-E | NA9161 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| | Zirconium hydride | Flammable solid | UN1437 | Flammable solid and Dangerous when wet | None | 173.206 | Forbidden | 150 pounds | 1,2 | 5 | Segregation same as for flammable solids labeled Dangerous When Wet |
| * | Zirconium metal, dry, *chemically produced, finer than 20 mesh particle size* | Flammable solid | NA2008 | Flammable solid | None | 173.214 | Forbidden | 75 pounds | 1 | 5 | Separate from flammable gases or liquids, oxidizing materials or organic peroxides |
| * | Zirconium metal, dry, *mechanically produced, finer than 270 mesh particle size* | Flammable solid | NA2008 | Flammable solid | None | 173.214 | Forbidden | 75 pounds | 1 | 5 | Separate from flammable gases or liquids, oxidizing materials or organic peroxides |
| * | Zirconium, metal, liquid, suspensions | Flammable liquid | NA1308 | Flammable liquid | None | 173.140 | Forbidden | 5 gallons | 1 | 5 | |
| | Zirconium metal, wet, *chemically produced, finer than 20 mesh particle size* | Flammable solid | NA1358 | Flammable solid | None | 173.214 | Forbidden | 150 pounds | 1,2 | 5 | |
| | Zirconium metal, wet, *mechanically produced, finer than 270 mesh particle size* | Flammable solid | NA1358 | Flammable solid | None | 173.214 | Forbidden | 150 pounds | 1,2 | 5 | |
| E | Zirconium nitrate (*RQ-5000/2270*) | Oxidizer | UN2728 | Oxidizer | 173.153 | 173.154 | 25 pounds | 100 pounds | 2 | 2 | |
| | Zirconium picramate, wet *with at least 20% of water* | Flammable solid | UN1517 | Flammable solid | None | 173.216 | Forbidden | 25 pounds | 1 | 1 | Stow away from heavy metals and their salts |
| E | Zirconium potassium fluoride (*RQ-5000/2270*) | ORM-E | NA9162 | None | None | 173.510 | No limit | No limit | 2 | 2 | |
| * | Zirconium scrap (*borings, clippings, shavings, sheets, or turnings*) | Flammable solid | UN1932 | Flammable solid | 173.153 | 173.220 | Forbidden | Forbidden | 1 | 4 | Separate from flammable gases or liquids, oxidizing materials, or organic peroxides |
| EA | Zirconium sulfate (*RQ-5000/2270*) | ORM-B | NA9163 | None | None | 173.510 | 100 pounds | No limit | 2 | 2 | |
| E | Zirconium tetrachloride, solid (*RQ-5000/2270*) | Corrosive material | UN2503 | Corrosive | 173.244 | 173.245b | 25 pounds | 100 pounds | 1,2 | 1,2 | |

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3. In § 172.202 paragraph (a)(3) would be added and paragraph (b) would be revised to read as follows:

**§ 172.202 Description of hazardous material on shipping papers.**

(a) * * *

(3) The identification number assigned to the material in § 172.101.

* * * * *

(b) The basic description specified in paragraphs (a)(1), (2) and (3) of this section must be shown in sequence except that the technical name of the material may be entered between the proper shipping name and the class. For example: "Gasoline, Flammable liquid UN 1203;" "Flammable solid n.o.s. UN 1325;" or "Corrosive liquid n.o.s. (Caprylyl chloride) Corrosive material UN 1760."

* * * * *

4. Section 172.300 would be revised to read as follows:

**§ 172.300 General marking requirements.**

Except as provided by this subchapter, each person who offers a package containing a hazordous material for transportation shall mark the package with the proper shipping name and identification number assigned to the material in § 172.101. However, when it has been determined by the shipper that a package has been previously marked as required for the material it contains, it need not be remarked. This section does not apply to portable tanks, cargo tanks and tank cars.

5. In § 172.326 paragraphs (a) and (b) would be revised to read as follows:

**§ 172.326 Portable tanks.**

(a) No person may offer for transportation or transport a portable tank containing a hazardous material unless it is marked legibly—

(1) On each side and each end with the identification number specified for the material in § 172.101 on a panel as specified by § 172.332, and

(2) On each side with the proper shipping name of the material in lettering no less than two inches (50.8mm.) in height.

(b) A portable tank marked with the identification number or name of a specific hazardous material may not be used to transport any other material unless the marking is removed, or changed to identify the hazardous material in the portable tank, whichever is appropriate.

* * * * *

6. In § 172.328 paragraphs (a), and (b) and (e) would be revised to read as follows:

**§ 172.328 Cargo tanks.**

(a) No person may offer for transportation or transport a hazardous material in a cargo tank unless the cargo tank is marked on each side and each end with the identification number specified for the material in § 172.101 on a panel as specified in § 172.332.

(1) A person who offers a motor carrier a hazardous material for transportation in a cargo tank shall provide to the motor carrier the required identification numbers on panels prior to or at the time the material is offered for transportation unless the cargo tank is already marked with identification numbers as required by this subpart.

(2) A person who offers a cargo tank containing a hazardous material for transportation, shall affix the required identification numbers on panels prior to or at the time the material is offered for transportation unless the cargo tank is already marked with identification numbers as required by this subpart.

(3) As an alternative, the marking required by paragraph (a) of this section on the front of a cargo tank may be on the front of a truck-tractor instead of or in addition to the marking on the front of the cargo tank to which the truck-tractor is attached.

(4) Identification numbers are not required on nurse tanks meeting the provisions of § 173.315(m) of this subchapter.

(b) Except as specified in paragraph (a) of this section, when the name of a material or other marking is required by this subchapter to be marked on a cargo tank, it must be legibly displayed in lettering or numbers no less than two inches (50.8mm.) in height.

* * * * *

(e) A cargo tank marked with the identification number or name of a specific hazardous material may not be used to transport any other material unless the marking is removed, or changed to identify the hazardous material the cargo tank contains, whichever is appropriate.

7. Section 172.330 would be revised to read as follows:

**§ 172.330 Tank cars.**

(a) No person may offer for transportation or transport a hazardous material in a tank car unless the tank car is marked on each side and each end with the identification number specified for the material in § 172.101 on a panel as specified in § 172.322. Also, when required to be marked by Part 173 or 179 of this subchapter, each tank car and tank car tank (DOT 106 or 110) used to transport a hazardous material must be marked as specified in this subpart with the—

(1) Proper shipping name, or

(2) Common name authorized in this subchapter for the material such as "Refrigerant Gas."

(b) The letters in the marking of a proper shipping or common name must be 4 inches (101.6mm.) or more in height with at least a ⅝ inch (15.9mm.) stroke. The separation between each letter must be at least ¾ inch (19.0mm.).

(c) The marked proper shipping or common name must be—

(1) Affixed to both sides of the tank car tank, and

(2) Except for tank cars transporting DOT 106 and 110 multi-unit tank car tanks, readily visible when viewed from each side of the tank car.

(d) A tank car and a tank car marked with the identification number or name of a specific hazardous material may not be used to transport any other material unless the marking is removed, or changed to identify the hazardous material the tank car or tank car tank contains, whichever is appropriate.

(e) For a hazardous material in a DOT 106 or 110 tank car tank,

(1) The identification number specified for the material in § 172.101 must be marked on one panel as specified in § 172.332 that is affixed to the side of the tank,

(2) A motor vehicle or rail car used to transport the tank car tank must be marked on each side and each end with the identification number specified for the material in § 172.101 on a panel as specified in § 172.332, and

(3) If the tank car tank contains chlorine, marking of the name "Chlorine" is not required when the CHLORINE label is used as provided in § 172.405(b).

8. Section 172.332 would be added to read as follows:

**§ 172.332 Identification number markings and orange panel specifications.**

(a) The orange panel for portable tanks, cargo tanks and tank cars shall be 6¼ inches (16 cm.) high by 16¼ inches (41.5 cm.) wide with a 7/16 of an inch (12 mm.) black outer boarder. An identification number shall be displayed in 4–inch (100 mm.) black Helvetica Medium numerals. Measurements may vary from those specified plus or minus 0.1 of an inch (3 mm.).

(b) The orange display panel may be made of any durable material prescribed for placards in § 172.519, and shall be of the orange color specified for labels or placards in Appendix A to this Part.

(c) The name of a material respresented by an identification

number may be shown in the upper left border of the orange panel in letters not more than 18 points (¼-inch) high.

(d) Except for size and color, the orange panel and identification numbers are illustrated as follows:

(e) The identification number on an orange panel shall be displayed in proximity to any placard required by §172.504.

(49 U.S.C. 1803, 1804; 1808; 49 CFR 1.53, App. A to Part 1, and paragraph (a)(4) of App. A, Part 106.)

**Note.** The Materials Transportation Bureau has determined that this document does not contain a major proposal requiring preparation of an economic statement under Executive Order 12044 and DOT implementing procedures (43 FR 9582) nor an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.).

A regulatory evaluation is available in the public docket.

Issued in Washington, D.C., on May 23, 1979.

**Alan I. Roberts,**

*Associate Director for Hazardous Materials Regulation Materials Transportation Bureau.*

[FR Doc. 79-16984 Filed 6-6-79; 8:45 am]

BILLING CODE 4910-60-M

federal register

Thursday
June 7, 1979

Part V

# Department of Health, Education, and Welfare

## Office of Education

## Correction Education Demonstration Program

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Office of Education

[45 CFR Part 161j]

### Proposed Rules for the Correction Education Demonstration Program

**AGENCY:** Office of Education, HEW.

**ACTION:** Proposed rules.

**SUMMARY:** The Comissioner of Education proposes to issue regulations to implement the Correction Education Demonstration Project Act of 1978. The program provides financial assistance for the purpose of developing demonstration projects relating to the academic and vocational education of juvenile delinquents, youth offenders, and adult criminal offenders.

**DATES:** Interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed regulations on or before August 6, 1979.

Public meetings will be held in each of the ten regions on July 11, 1979. The time for these meetings is—

9:00 a.m.–12:00 Noon.

1:00 p.m.–5:00 p.m.

7:00 p.m.–9:00 p.m.

**ADDRESSES:** Written comments should be addressed to Dr. James M. Spillane, U.S. Office of Education, Room 2047, FOB–6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

The locations of the public meetings are—

Region I—Boston—Bunker Hill Community College, Room C 202, Rutherford Avenue, Charlestown, Massachusetts.

Region II—New York—Norman Thomas High School, 111 East 33rd Street, New York City, New York.

Region III—Philadelphia—University City, Holiday Inn, 36th & Chestnut Streets, Philadelphia, Pennsylvania.

Region IV—Atlanta—Suite 2221, 101 Mariette Tower Bldg., Atlanta, Georgia.

Region V—Chicago—Center for Urban Education, 160 West Wendell Street (1050 North Wells), Chicago, Illinois.

Region VI—Dallas—North Lake Junior College, 2000 Walnut Hill Lane, Irving, Texas.

Region VII—Kansas City—Penn Valley Community Junior College, 3201 Southwest Trafficway, Room CC 503, Kansas City, Missouri.

Region VIII—Denver—George Washington High School, Lunch Room, 655 South Monaco Street, Denver, Colorado.

Region IX—San Francisco—Room 209, Federal Office Bldg., 50 United Nations Plaza, San Francisco, California.

Region X—Seattle—Room RC 1132 North Seattle Community College, 9600 College Way North, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Dr. James M. Spillane (202) 245–7292.

**FOR INFORMATION ON REGIONAL HEARINGS CONTACT:** The appropriate Regional Commissioner for Educational Programs listed below:

Region I, Boston, Dr. Thomas J. Burns, (617) 223–7500.

Region II, New York, Dr. William D. Green, (212) 264–4370.

Region III, Philadelphia, Dr. Albert C. Crambert, (215) 596–1001.

Region IV, Atlanta, Dr. William L. Lewis, (404) 221–2063.

Region V, Chicago, Ms. Juliette Noone Lester, (312) 353–5215.

Region VI, Dallas, Mr. Edward J. Baca, (214) 767–3626.

Region VII, Kansas City, Dr. Harold Blackburn, (816) 374–2276.

Region VIII, Denver, Dr. John Runkel, (303) 837–3544.

Region IX, San Francisco, Dr. Caroline Gillin, (415) 556–4920.

Region X, Seattle, Mr. Allen Apodaca, (206) 442–0460.

**SUPPLEMENTARY INFORMATION:** The Commissioner is required by law to publish regulations for programs authorized by Congress. Please note that the Congress has not appropriated funds to operate this program in Fiscal Year 1979, and the President's budget does not request funds for Fiscal Year 1980.

The statute and legislative history of the Correction Education Demonstration Project Act, (Section 371–374 of Title III of Pub. L. 95–561) are very brief. The Senate report notes that there are various sources of funds for correction education within the Federal government. It emphasizes, however, that none of these programs is devoted exclusively to the development and implementation of demonstration projects involving new and innovative techniques and methods in the area of correction education.

The statute authorizes demonstration projects relating to academic and vocational education for various categories of offenders. Before proceeding we need to answer a preliminary question: "What is correction education?"

Correction education is education to meet the special educational needs of offenders—needs for individualized instruction and for a high level of supportive services, including transitional services, that enable offenders who have been incarcerated to adjust to the community.

Correction education is also used to refer to any education provided within a correctional facility—a prison or a juvenile training school. Incarceration itself poses special problems for education such as direct coercion to participate, lack of motivation, lack of freedom, and need for increased supervision.

In reviewing the literature on correction education, the Office of Education has noted the following areas of need:

- The need to develop community-based corrections programs which make available a wide range of community services including those of education. This reflects a national trend toward community-based corrections facilities.
- The need to develop transition programs between correctional institutions and the community which offer access to community social and educational services.
- The need for education systems—State educational agencies (SEAs), local educational agencies (LEAs), and institutions of higher education, particularly community colleges, to provide the necessary range of services to clients in community-based correctional facilities.
- The need to develop effective correction education programs for incarcerated offenders that integrate academic and vocational education with necessary supportive services to enable the offender to take best advantage of the education and training.
- The need to coordinate the resources of a variety of public and private agencies to provide services to offenders and ex-offenders.

OE invites promising applications that focus on effective strategies to respond to these areas of need in the field of correction education. At the same time OE seeks comment on whether it should limit the focus of the Correction Education Demonstration Program to one or more specific priority areas.

The authorization for appropriations is $5 million. However, there is a variety of other resources at the Federal, State, and local levels for correction education. For that reason the proposed rules strongly encourage that funds available under this new program be used in conjunction with other resources to bring about improved programs for offenders. Further, applicants must demonstrate coordination with other agencies in their requests for support.

The Commissioner believes it would not be desirable to concentrate funds in large comprehensive projects. Funds, however, could be used to support innovative components of these projects. These components could be part of either new or established projects.

Funds could be used for small projects providing intensive services for a short period of time. They could also be used to bring about more effective coordination of resources at the local level by involving and integrating support and services from a number of different agencies that work with populations of offenders.

Multi-year support of up to three years may be sought for a project.

These are demonstration projects and they must be set up to continue after Federal funding stops. A key consideration in planning for a project must be the assumption of funding at the end of the grant. In proposals for multi-year projects, the applicants must demonstrate increasing levels of local support after the first project year.

The program strategy is to seek out promising demonstration projects. Projects that receive multi-year funding will receive funds in the second or third continuation years for validation of effectiveness.

In each year of the program the Commissioner will bring staff of projects together for a national conference and workshop. The purpose of the national meeting is to facilitate sharing among projects, to provide resources for problem solving, and to provide staff development in areas of need. Where feasible, OE will provide technical assistance to the projects in the form of training flexible enough to respond to a variety of problem areas generated by local projects.

*Issues in Developing the Regulations Were: Should OE Only Fund Projects Leading to Comprehensive Education Programs?*

A fundamental issue is whether OE should *only* fund projects which will result in comprehensive programs or are parts comprehensive correction education programs including academic and vocational education with necessary supportive services—or—should OE *also* fund projects where only academic or only vocational education would be available. These proposed regulations emphasize the former and permit the Commissioner annually to reserve funds for them, but they do not preclude funding other outstanding projects.

*Who Is the Target Population?*

One issue considered in developing these regulations was the population to be served. The statute authorized correction education demonstration programs for "antisocial, aggressive or delinquent persons, including juvenile delinquents, youth offenders, and adult criminal offenders." The legislative history refers only to the offender categories.

The Commissioner proposes to interpret the population to be served as limited to offenders—persons who have been found guilty of having committed criminal offenses. Ex-offenders would also be eligible to participate.

The Commissioner believes this is the best interpretation because persons who have not been found guilty of a crime should not need "correction education," and thereby be labeled as offenders. However, the Commissioner seeks comments on this issue, especially on whether to include in the target population—

(a) Persons charged with crimes but diverted from prosecution on the condition they participate in an educational program;

(b) Persons detained in jails or other facilities prior to trail;

(c) Youths charged with status offenses—such as truancy—that would not be crimes if committed by adults; and

(d) Other "aggressive" or "anti-social" persons as determined by school officials.

*May Postsecondary Level Courses by Funded?*

The statute does not limit academic or vocational education to the elementary and secondary levels. Therefore, the Commissioner considers applications proposing postsecondary academic or vocational education projects.

*What Is the Role of Staff Training in a Correction Eduction Project?*

The Commissioner considers staff training to a crucial consideration in a correction education project. Training could address the following:

(1) Offender populations are overwhemingly minority populations. However, the staff who work with offenders, whether in prisons, community settings, schools, or institutions of higher education are predominantly non-minority. Correction education staff need training to make them sensitive to the backgrounds and needs of offenders and to equip them with the skills to work with offender populations.

(2) Corrrection education programs have failed in the past from lack of proper management. This indicates a need for training in management skills for improved delivery of services to offenders.

(3) The integration of academic and vocational education with supportive services appropriate to the needs of offenders is the core of every correction education project. Staff need training in the development of strategies and approaches to bring about this integration.

(4) There is a variety of resources at all levels—Federal, State, and local—that could focus on correction education. Correction education personnel need training in skills to identify, mobilize, and coordinate resources.

*How Will Projects be Evaluated?*

Projects must include an evaluation that determines whether a project met the special educational needs of the offender group served: whether the offenders learned a vocational skill, or obtained a job. OE will also be interested in any information relating to the reduction of recidivism.

*When Must Private School Children be Allowed to Participate?*

If an SEA or LEA receives a grant for a project, the project must provide for the comparable participation of members of the target population enrolled in private elementary and secondary schools located in the area served by the SEA or LEA, in accordance with section 302(b) of the Special Projects Act.
(20 U.S.C. 2942(b))

*What Other Regulations Apply to This Program?*

The proposed regulations for part 161j do not contain certain types of requirements. Those requirements are covered in EDGAR–The Education Division General Administrative Regulations—which will replace the General Provision for Office of Education Programs Regulations and which was published as a notice of proposed rulemaking (NPRM) on May 4, 1979 (44 FR 26308)

Anyone wanting to comment on those requirements should do so in response to the EDGAR NPRM, rather than to this NPRM.

The following items applicable to this program will now be among those covered generally in EDGAR.

How to apply for a grant.

How grants are made.

Certain conditions that must be met by a grantee.

The administrative responsibilities of a grantee.

The procedures the Office of Education uses to get compliance.

Reviewers should be aware that the first "selection criteria" for this program will become part of EDGAR and that those same criteria will apply to all OE direct grant programs, unless they are

specifically excepted on the basis of individual programs.

**Summary of Regulations**

The proposed rules for the Correction Education Demonstration Program are divided into five subparts.

Subpart A describes the purpose of the program, tells who is eligible to receive grants, notes other regulations that apply to the program, and defines a number of significant terms used in the legislation.

Subpart B provides information on proposed beneficiaries and on the types of projects the Office of Education assists under the program.

Subpart C gives application requirements and information on possible multi-year projects.

Subpart D describes the criteria the Commissioner applies in the evaluation of applications.

Subpart E describes the conditions that grantees must meet.

**Invitation To Comment**

A public meeting on this Notice of Proposed Rulemaking will be held in each of the ten Federal regions. Since we expect to schedule public meetings for several regulations on the same day, at the same place, we need to get an idea of how many persons are interested in speaking about these regulations. If you are interested in commenting at a public meeting, we encourage you to call the appropriate Regional Commissioner of Education, who will schedule a time for your comments. Persons who do not notify the Regional Commissioner of their intention to comment will be given an opportunity to speak. Those persons making presentations will be called upon according to their prearranged schedule, or if not prearranged, in the order of registration.

We expect that comments on these proposed regulations will be second on the agenda of the public meeting, after the Safe Schools regulations.

In addition, interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

All comments submitted in response to this notice will be available for public inspection, both during and after the comment period, in Room 2047, FOB–6, 400 Maryland Avenue, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(These proposed regulations are isued under the authority of Sections 371–374 of ESEA, Pub. L. 95–561, 92 Stat. 2222 (20 U.S.C. 3031–3034))

(Catalog of Federal Domestic Assistance Number Not Yet Assigned)

Dated: March 8, 1979.

**Ernest L. Boyer,**

*U.S. Commissioner of Education.*

Approved: May 25, 1979.

**Joseph A. Califano, Jr.,**

*Secretary of Health, Education, and Welfare.*

Title 45 Code of Federal Regulations is amended to add Part 161j:

## PART 161j—CORRECTION EDUCATION DEMONSTRATION PROGRAM

**Subpart A—General**

Sec.

161j.1 What is the Correction Education Demonstration Program?
161j.2 Who is eligible to apply for financial assistance?
161j.3 Regulations that apply to the Correction Education Demonstration Program.
161j.4 Definition in this part.

**Subpart B—What Kind of Projects Does the Office of Education Assist Under This Program?**

161j.10 What is a correction education demonstration project?
161j.11 What is the target population to be served by a project?
161j.12 Where may a project be located?
161j.13 Supportive services.
161j.14 Types of projects.

**Subpart C—How To Apply for a Grant**

161j.20 Application requirements.
161j.21 Duration of Federal support.

**Subpart D—How is a Grant Made?**

161j.30 What selection criteria does the Commissioner use?
161j.31 Selection criterion: plan of operation.
161j.32 Selection criterion: quality of staff.
161j.33 Selection criterion: budget and cost effectiveness.
161j.34 Selection criterion: evaluation plan.
161j.35 Selection criterion: adequacy of resources.
161j.36 Selection criterion: likelihood of achieving results.
161j.37 Selection criterion: quality of dissemination.
161j.38 Selection criterion: coordination of resources.
161j.39 Selection criterion: capability to continue project.
161j.40 Georgraphic and offender population distribution.

**Subpart E—What Conditions Must Be Met by a Grantee?**

161j.50 Participation of private school children.
161j.51 Use of funds.

**Authority:** Secs. 371–374 of ESEA, Pub. L. 95–561, 92 Stat. 2222 (20 U.S.C. 3031–3034), unless otherwise noted.

### Subpart A—General

**§ 161j.1 What is the correction education demonstration program?**

The program provides Federal assistance for demonstration projects relating to the academic and vocational education of juvenile delinquents, youth offenders, and adult criminal offenders.

(20 U.S.C. 3032)

**161j.2 Who is eligible to apply for financial assistance?**

Eligible applicants include—

(a) A State educational agency (SEA);

(b) A local educational agency (LEA);

(c) An institution of higher education;

(d) Any public agency; or

(e) A nonprofit private agency, organization, or institution.

(20 U.S.C. 3032)

**§ 161j.3 Regulations that apply to the correction education demonstration program.**

(a) *Regulations. The following regulations apply to the Correction Education Demonstration Program:*

(1) The Education Division General Administrative Regulations (EDGAR) in part 100a (Direct Grant Program) and part 100c (Definitions).

(2) The regulations in this part 161j.

(b) *How to use regulations; how to apply for funds.*

The "Introduction to Education Division Program" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(c) *Index to EDGAR.* The EDGAR include an index of the subjects they cover (appendix A to part 100c).

(d) *Definitions in EDGAR.* The following terms used in this part are defined in part 100c:

Applicant
Application
Award
Budget
Commissioner
Institutions of higher education
Local educational agency
Non-profit
Private
Project
Public

State
State educational agency
(20 U.S.C. 3032)

**§ 161j.4 Definitions in this part.**

As used in this part—

"Adult" means a person who has reached the age of majority under State law;

"Adult criminal offender"; means an adult who has been found by a court to have violated a criminal law;

"Comprehensive correction education program" means a program that integrates academic and vocational education, and supportive services;

"Juvenile delinquent" means a youth has been treated by a court as a youth and found by a court to have violated a criminal law;

"Sentence" means a term of alternate service, confinement, probation, or parole;

"Supportive services" means those services that prepare an offender to function effectively in society by providing the offender with decision-making skills, job interview skills, group and family living skills, interpersonal skills, problem-solving skills, communication skills, and support in other areas appropriate to the needs of the individual offender;

"Transitional services" means special educational or educationally related services provided for those released from institutions and reentering a non-institutional environment in the placement community. These services include pre-release programs and the necessary activities and supportive services to assist the person to reintegrate into the community;

"Youth" means a person under the age of majority as determined by State law; and

"Youth offender" means a youth who has been treated by a court as an adult and found to have violated a criminal law.

(20 U.S.C. 3032)

## Subpart B—What Kinds of Projects Does the Office of Education Assist Under This Program?

**§ 161j.10 What is a correction education demonstration project?**

(a) A correction education demonstration project demonstrates an effective way of delivering academic or vocational education within the framework of a comprehensive correction education program to meet the special educational needs of an offender population. The education may be at the elementary, secondary, or postsecondary level.

(b) A correction education demonstration project may also be a coordinating project that effectively coordinates a variety of resources and agencies to bring about a comprehensive correction education program.

(20 U.S.C. 3032)

**§ 161j.11 What is the target population to be served by a project?**

A project must serve an offender population: persons who have received sentences as juvenile delinquents, youth offenders, or adult criminal offenders. A project may also serve ex-offenders.

(20 U.S.C. 3032)

**§ 161j.12 Where may a project be located?**

A project may deliver correction education in any setting appropriate to the offender population to be served, including:

(a) A prison or other closed institution;

(b) A day or residential community-based facility; or

(c) A school, college, or other training facility.

(20 U.S.C. 3032)

**§ 161j.13 Supportive services.**

A project must provide appropriate supportive services for the population to be served.

(20 U.S.C. 3032)

**§ 161j.14 Types of projects.**

Types of projects include:

(a) Projects that facilitate the development of effective community-based educational opportunities for juvenile delinquents, youth or adult offenders.

(b) Projects that facilitate offenders' transition between correctional institutions and the community and that offer access to community-based social and educational services.

(c) Projects that are designed to result in the greater involvement of educational systems—SEAs, LEAs, and institutions of higher education—in correction education.

(d) Projects that are designed to result in the development of comprehensive correction education projects to benefit incarcerated offenders.

(e) Projects that are designed to result in the coordination of multiple resources at the local level for the delivery of comprehensive educational services to offenders and ex-offenders.

(20 U.S.C. 3032)

## Subpart C—How To Apply for a Grant

**§ 161j.20 Applicant requirements.**

An applicant shall submit the information required by the Commissioner in the Notice of Closing Date published in the Federal Register and in the application information package.

(20 U.S.C. 3032)

**§ 161j.21 Duration of Federal support.**

(a)(1) Each grant is for a period of up to one year.

(2) Projects may be designed for a multi-year period not to exceed three years.

(b) An applicant that proposes a multi-year project shall demonstrate—

(1) The need for the multi-year project;

(2) A detailed budget for the first budget period of the project; and

(3) A budget estimate for each budget period of the project after the first budget period.

(c) The Commissioner will review multi-year projects in the second and third continuation years for evidence that the grantee will provide other sources of support to continue the project after Federal funding terminates.

(20 U.S.C. 3032)

## Subpart D—How is a Grant Made?

**§ 161j.30 What selection criteria does the Commissioner use?**

(a) The Commissioner evaluates an application and selects an application for support on the basis of the selection criteria used in 45 CFR part 100a.201–100a.206 (EDGAR) and the criteria contained in these regulations.

(b) The selection criteria in EDGAR constitute 73 possible points. Specific program criteria constitute 27 possible points. The maximum possible point score for each criterion indicates the relative importance assigned to that criterion by the Commissioner as follows:

(20 U.S.C. 3032)

**§ 161j.31 Selection criterion: Plan of operation.**

(a) The Commissioner reviews an application for information that shows the quality of the plan of operation for the project.

(b) The Commissioner looks for information that shows—

(1) High quality in the overall design for the proposed project; (10 points)

(2) An effective plan of management for the project; (5 points)

(3) An effective plan for training of staff members in needed skill areas; (5 points)

(4) A clear description of how the objectives of the project relate to the purposes of the Correction Education Demonstration Program; (2½ points) and

(5) The way the applicant plans to use its resources and staff to achieve each objective. (2½ points) (Total: 25 points)

(20 U.S.C. 3032)

**§ 161j.32 Selection criterion: Quality of staff.**

(a) The Commissioner reviews an application for information that shows the quality of the staff the applicant plans to use on the project.

(b) The Commissioner looks for information that shows—

(1) The Qualifications of the project director; (10 points)

(2) The qualifications of each of the following: (7 points)

(i) The professional staff;

(ii) Consultants; and

(3) The time that each person referred to in paragraphs (b) (1) and (2) of this section plans to commit to the proposed project.

(c) To determine the qualifications of the proposed staff the Commissioner considers the individual's professional training, experience, and competency in the field of correction education.

(d) The Commissioner also looks at proposed staff members and consultants in terms of their understanding of a sensitivity to the needs of the target population. (Total: 17 points)

(20 U.S.C. 3032)

**§ 161j.33 Selection criterion: Budget and cost effectiveness.**

(a) The Commissioner reviews an application for information that shows that the project has an adequate budget and is cost effective.

(b) The Commissioner looks for information that shows—

(1) An effective plan of financial management;

(2) An itemized statement of cost that justifies each line in the proposed budget and indicates that costs are reasonable in relation to the objectives of the project. (Total: 8 points)

(20 U.S.C. 3032)

**§ 161j.34 Selection criterion: Evaluation plan.**

(a) The Commissioner reviews an application for information that shows the quality of the evaluation plan for the project.

(b) The Commissioner looks for information that shows a quantifiable method to determine if the project achieves each of its objectives. (Total: 5 points)

(20 U.S.C. 3032)

**§ 161j.35 Selection criterion: Adequacy of resources.**

(a) The Commissioner reviews an application for information that shows that the applicant plans to devote adequate resources to the project.

(b) The Commissioner looks for information that shows that—

(1) The facilities the applicant plans to use to conduct the project are adequate;

(2) The equipment the applicant plans to use is adequate; and

(3) The support staff the applicant plans to use is adequate. (Total: 5 points)

(20 U.S.C. 3032)

**§ 161j.36 Selection criterion: Likelihood of achieving results.**

(a) The Commissioner reviews an application for information that shows the applicant is likely to achieve results and that these results further the purposes of the program.

(b) The Commissioner looks for information that shows that—

(1) The applicant has both the capability and commitment to achieve the objectives of the project; and

(2) The project, if successfully completed, furthers the purposes of the program. (Total: 10 points)

(20 U.S.C. 3032)

**§ 161j.37 Selection criterion: Quality of dissemination.**

The Commissioner reviews an application for information that shows the quality of the plan to disseminate information related to the project.

(b) The Commissioner looks for information that shows that—

(1) The applicant has a high quality plan to make information about the project available to the general public; and

(2) The applicant has a high quality plan to make the results of the project available to interested agencies and institutions. (Total: 3 points)

(20 U.S.C. 3032)

**§ 161j.38 Selection criterion: Coordination of resources.**

The Commissioner reviews an application for information that shows that the applicant agency has the capability to coordinate with or to coordinate other resources to bring about a comprehensive correction education program. Evidence of capability are letters of commitment from other agencies; documentation that planning the proposed project has involved other agencies; and evidence of sharing staff and facilities. (Total: 12 points)

(20 U.S.C. 3032)

**§ 161j.39 Selection criterion: Capability to continue project.**

The Commissioner reviews an application for information that shows that the applicant has the ability to continue to the project with its own resources after termination of Federal funding. The Commissioner will review multi-year applications for information that shows the likelihood the applicant will introduce local support in the second and third continuation years. (Total: 15 points)

(20 U.S.C. 3032)

**§ 161j.40 Geographic and offender population distribution.**

In awarding grants, the Commissioner funds a variety of differenct projects and seeks equitable geographic distribution of the projects across the country in a variety of urban, suburban, and rural settings.

(20 U.S.C. 3032)

## Subpart E—What Conditions Must be Met by a Grantee?

**§ 161j.50 Participation of private school children.**

If an SEA or LEA receives a grant for a project, the project must provide for the comparable participation of members of the target population enrolled in private elementary and secondary schools located in the area served by the SEA or LEA, in accordance with section 302(b) of the Special Projects Act.

(20 U.S.C. 2942(b))

**§ 161j.51 Use of funds.**

(a) Funds may be used for all reasonable costs associated with the conduct of a project.

(b) Funds may be used for training and staff development. The primary objectives of training are to provide staff with skills to work more effectively with offender populations. These skills include problem identification, resource identification, resource mobilization, action planning, and program implementation. Management skills for improved program delivery are also a goal of training.

(c) Funds may be used to support the efforts of a coordinator to identify and to coordinate multiple resources that will result in a comprehensive correction education project.

(d) Funds may be used for consultants, conferences, and workshops.

(20 U.S.C. 3032)

[FR Doc. 79-17668 Filed 6-6-79; 8:45 am]

BILLING CODE 4110-02-M

federal register

Thursday
June 7, 1979

Part VI

# Department of Health, Education, and Welfare

Office of Education

Proposed Rules for Safe Schools Program

**DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

**Office of Education**

**[45 CFR Part 161n]**

## Proposed Rules for Safe Schools Program

**AGENCY:** Office of Education, HEW.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Commissioner proposes regulations for the Safe Schools Program enacted by the Education Amendments of 1978. These proposed regulations govern the awards of discretionary grants to assist 15 local educational agencies (LEAs) in developing and implementing projects designed—

(a) To prevent and reduce the incidence of crimes against school children, employees, and facilities; and

(b) To encourage the reporting of serious crimes to local law enforcement agencies.

**DATES:** All comments must be received on or before August 6, 1979. Public meetings will be held in each of the ten regions on July 11, 1979. The time for these meetings is —

9:00 a.m.–12:00 Noon.
1:00 p.m.–5:00 p.m.
7:00 p.m.–9:00 p.m.

**ADDRESSES:** Comments should be addressed to: Mr. Robert L. Thomas, U.S. Office of Education, 400 Maryland Avenue, S.W. (ROB–3, Room 3010), Washington, D.C. 20202.

The locations of the public meetings are—

Region I—Boston—Bunker Hill Community College, Room C 202, Rutherford Avenue, Charlestown, Massachusetts.
Region II—New York—Norman Thomas High School, 111 East 33rd Street, New York City, New York.
Region III—Philadelphia—University City, Holiday Inn, 36th & Chestnut Streets, Philadelphia, Pennsylvania.
Region IV—Atlanta—Suite 2221, 101 Mariette Tower Bldg., Atlanta, Georgia.
Region V—Chicago—Center for Urban Education, 160 West Wendell Street (1050 North Wells), Chicago, Illinois.
Region VI—Dallas—North Lake Junior College, 2000 Walnut Hill Lane, Irving, Texas.
Region VII—Kansas City—Penn Valley Community Junior College, 3201 Southwest Trafficway, Room CC 503, Kansas City, Missouri.
Region VIII—Denver—George Washington High School, Lunch Room, 655 South Monaco Street, Denver, Colorado.
Region IX—San Francisco—Room 209, Federal Office Bldg., 50 United Nations Plaza, San Francisco, California.
Region X—Seattle—Room RC 1132 North Seattle Community College, 9600 College Way North, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert L. Thomas, Division of State Educational Assistance Programs, U.S. Office of Education, Telephone (202) 245–2605.

**FOR INFORMATION ON REGIONAL HEARINGS CONTACT:** The appropriate Regional Commissioner for Educational Programs listed below:

Region I, Boston, Dr. Thomas J. Burns, (617) 223–7500.
Region II, New York, Dr. William D. Green, (212) 264–4370.
Region III, Philadelphia, Dr. Albert C. Crambert, (215) 596–1001.
Region IV, Atlanta, Dr. William L. Lewis, (404) 221–2063.
Region V, Chicago, Ms. Juliette Noone Lester, (312) 353–5215.
Region VI, Dallas, Mr. Edward J. Baca, (214) 767–3626.
Region VII, Kansas City, Dr. Harold Blackburn, (816) 374–2276.
Region VIII, Denver, Dr. John Runkel, (303) 837–3544.
Region IX, San Francisco, Dr. Caroline Gillin, (415) 556–4920.
Region X, Seattle, Mr. Allen Apodaca, (206) 442–0460.

**SUPPLEMENTARY INFORMATION:** The Commissioner is required by law to publish regulations for programs authorized by Congress. Please note that the Congress has not appropriated funds to operate this program in Fiscal Year 1979, and the President's budget does not request funds for Fiscal Year 1980.

The program statute requires the Commissioner to select the 15 eligible applicants for these grants within 180 days of the enactment of the Education Amendments of 1978. The 15 LEAs have been selected and notified. The selected LEAs are not listed in this NPRM.

The proposed regulations define terms, application procedures, and clarify funding criteria and suspension provisions for the 15 selected LEAs. The program encourages selected LEAs to develop comprehensive plans to eliminate violent crime committed in their schools. LEAs are encouraged both to adopt measures to control incidences of violent crime and to identify and eliminate the causes of violent crime in their school. The program also requires LEAs to adopt guidelines for the reporting of serious crimes to local police.

In developing the proposed regulations, the Commissioner cooperated with representatives from the Office of Juvenile Justice and Delinquency Prevention (OJJDP), as required by statute. The 15 selected LEAs for the Safe School program are encouraged to use the available resources of the OJJDP regional centers in developing and implementing their own projects, in addition to the technical assistance they will receive from the Office of Education.

The proposed regulations for part 161n do not contain certain types of requirements. Those requirements are covered in EDGAR—the Education Division General Administrative Regulations—which replace the General Provisions for Office of Education Program Regulations and which were published as a notice of proposed rulemaking (NPRM) on May 4, 1979 (44 FR 26308).

Anyone wanting to comment on those requirements should do so in response to the EDGAR NPRM, rather than to this NPRM.

The following items applicable to this program are now covered generally in EDGAR:

How to apply for a grant.
How grants are made.
Certain conditions that must be met by a grantee.
The administrative responsibilities of a grantee.
The procedures the Office of Education uses to get compliance.

Reviewers should be aware that the last five funding criteria for this program, listed in part 161n.30(i), will become part of EDGAR as selection criteria.

### Invitation to Comment

A public meeting on this Notice of Proposed Rulemaking will be held in each of the ten Federal regions. Since we expect to schedule public meetings for several regulations on the same day, at the same place, we need to get an idea of how many persons are interested in speaking about these regulations. If you are interested in commenting at a public meeting, we encourage you to call the appropriate Regional Commissioner of Education, who will schedule a time for your comments. Persons who do not notify the Regional Commissioner of their intention to comment will be given an opportunity to speak. Those persons making presentations will be called upon according to their prearranged schedule, or if not prearranged, in the order of registration.

We expect that comments on these proposed regulations will be first on the agenda of the public meeting.

In addition, interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 60th day after publication of this document will be

considered in the development of the final regulations.

All written comments submitted in response to this notice will be available for public inspection, both during and after the comment period, in Room 3010, ROB-3, 7th D Street SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

### Citation of Legal Authority

As required by sec. 431(a) of the General Education Provisions Act (20 U.S.C. 1232(a)), a citation of statutory or other legal authority for each section of the regulations has been placed in parentheses on the line following the text of that section.

(Catalog of Federal Domestic Assistance No. not yet assigned)

Dated: April 20, 1979.

**Ernest L. Boyer,**

*U.S. Commissioner of Education.*

Approved: May 17, 1979.

**Joseph A. Califano, Jr.,**

*Secretary of Health, Education, and Welfare.*

Title 45 CFR is proposed to be amended by adding a new Part 161n to read as follows:

## PART 161n—SAFE SCHOOLS PROGRAM

### Subpart A—General

Sec.

161n.1 Description of Safe Schools Program.
161n.2 Eligible parties.
161n.3 Regulations that apply to the Safe Schools Program
161n.4 Program definitions.
161n.5–161n.9 [Reserved]

### Subpart B—What Kinds of Projects Does the Office of Education Assist Under This Program?

161n.10 Types of projects assisted.
161n.11–161n.19 [Reserved]

### Subpart C—How Does an LEA Apply for a Grant?

161n.20 Program requirements.
161n.21 Project and budget period.
161n.22–161n.29 [Reserved]

### Subpart D—How Is the Amount of a Grant Determined?

161n.30 Funding criteria.
161n.31 Funding procedure.
161n.32–161n.39 [Reserved]

### Subpart E—What Conditions Must be Met by a Grantee?

161n.40 Supplement but not supplant with Federal funds.
161n.41 Limitation on use of funds for alterations of school facilities.
161n.42–161n.49 [Reserved]

### Subpart F—What Compliance Procedures are Used by the Office of Education?

161n.50 Suspension of funding.
161n.51–161n.59 [Reserved]

**Authority:** Sec. 941–944, Title IX, Part D of the Elementary and Secondary Education Act of 1965, as amended by sec. 802 of Pub. L. 95–561, 92 Stat. 2301–2302 (20 U.S.C. 3351–3354), unless otherwise noted.

### Subpart A—General

#### § 161n.1 Description of safe schools program.

The Safe Schools Program:

(a) Provides funds to assist up to 15 local educational agencies (LEAs) in developing and implementing projects designed to prevent and to reduce the incidence of crimes committed against elementary and secondary school children, employees, and facilities; and

(b) Requires participating LEAs to develop administrative guidelines to encourage school staff to report to local police serious crimes committed against students, employees, and facilities.

(20 U.S.C. 3351, 3353(a))

#### § 161n.2 Eligible parties

Only the 15 LEAs previously selected by the Commissioner under procedures published separately in the **Federal Register** are eligible to apply for a grant under this part.

(20 U.S.C. 3353(a))

#### § 161n.3 Regulations that apply to the safe schools program.

(a) *Regulations.* The following regulations apply to the Safe Schools Program:

(a) The Education Division General Administrative Regulations (EDGAR) in Part 100a (Direct Grant Programs) and Part 100c (Definitions).

(2) The regulations in this Part 161n.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Education Division Programs" at the beginning of EDGAR includes general information to assist in:

(1) Using regulations that apply to Education Division programs; and

(2) Applying for assistance under an Education Division program.

(c) *Index to EDGAR.* The EDGAR include an index of the subjects they cover (Appendix A to Part 100c).

(d) *Definitions in EDGAR.* The following terms used in this part are defined in Part 100c:

Acquisition.
Applicant.
Application.
Budget period.
Commissioner.
Equipment.
Facilities.
Minor remodeling.
Personal property.
Project.
Project period.
Real property.

(e) *Definitions in ESEA.* The following terms used in this part are defined in Sec. 1001 (General Provisions) of the Elementary and Secondary Education Act of 1965:

Local educational agency.
State educational agency.
State.

(f) *Definitions in Part 74.* The following terms used in this part are defined in Part 74:

Grant.
Grantee.

(20 U.S.C. 1221e–3)

#### § 161n.4 Program definitions.

As used in this part:

"Act" means Title IX, Part D (Special Grants for Safe Schools) of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978.

"Crime" means an act of physical intrusion upon a non-consenting person or the destruction of real or personal property that, if committed by an adult, would carry a potential penalty or imprisonment under State or local law—for example, arson, assault, battery, homicide, larceny, rape, robbery, trespassing, or vandalism.

"Minor alteration" means minor remodeling as defined in Part 100c.

"School and school building" means any property, facility, vehicle, or area that an LEA designates to be used by school-related purposes; for example, athletic facilities, cafeterias, classroom buildings, playgrounds, school buses, and school parking lots.

"Serious crime" means crime as defined for the purposes of this part, that, if committed by an adult, would carry a potential penalty of imprisonment for six months or longer under State or local law.

(20 U.S.C. 3351–3354)

#### §§ 161n.5–161n.9 [Reserved]

### Subpart B—What Kinds of Projects Does the Office of Education Assist Under This Program?

#### § 161n.10 Types of projects assisted.

The Commissioner assists up to 15 LEAs to develop and implement projects designed to reduce crime in schools and to increase the safety and security of students, employees, schools, and school buildings. A project may include but is not restricted to components designed—

(a) To strengthen the leadership role of school principals in developing fair and consistent procedures that lead to a school climate conducive to learning;

(b) To increase the skills and effectiveness of classroom teachers through training in classroom management;

(c) To provide students an opportunity to participate in school governance;

(d) To involve students, parents, and the community in the solution of problems related to school crime;

(e) To hire, train, or retrain staff to prevent and reduce the incidence of crimes in schools through an awareness and understanding of the problems and potential solutions to crime;

(f) To identify and seek to eliminate those factors which may cause crime in the LEA.

(20 U.S.C. 3354)

**§§ 161n.11–161n.19 [Reserved]**

## Subpart C—How Does an LEA Apply for a Grant?

**§ 161n.20 Program requirements.**

Each LEA must submit an application which:

(a) Includes a plan of up to five years to prevent and reduce the incidence of crimes in its schools;

(b) Meets the requirements of EDGAR §§ 100a.150–100a.154 (SEA approval);

(c) Includes a project component to develop and implement administrative guidelines to encourage school officials and staff to report serious crimes committed in schools or school buildings to local law enforcement agencies.

(20 U.S.C. 3354)

**§ 161n.21 Project and budget period.**

The project period for an approved application is up to five years. Each budget period, however, will be 12 months. Continuation awards will be made according to the procedures in EDGAR §§ 100a.251–100a.253.

(20 U.S.C. 3352, 3354)

**§§ 161n.22–161n.29 [Reserved]**

## Subpart D—How is the Amount of a Grant Determined?

**§ 161n.30 Funding criteria.**

The Commissioner reviews applications for grants on the basis of the criteria in this section and may award up to 100 points for the listed criteria. The number of points an applicant receives depends upon the extent to which its application demonstrates that:

(a) A high rate of school crime exists in the LEA as evidenced by public records of school crime maintained by local law enforcement or other agencies (11 points).

(b) The LEA has an effective ongoing program to reduce crime (10 points).

(c) The LEA has financial need as evidenced by factors such as loss of tax base, rising expenses, or unforeseen fiscal problems (9 points).

(d) The proposed plan to reduce crime extends beyond the financial and staff resources of the LEA (8 points).

(e) The quality of education available to students in the applicant LEA is deficient relative to that in other LEAs throughout the State, as evidenced by factors such as achievement scores, deficient physical plants, staff/student ratios, or the percentage of pupils in the applicant LEA below minimum performance standards in relation to State or national norms (7 points).

(f) The proposed project will be effective in reducing crime, as evidenced by factors such as previous research or successful pilot projects (6 points).

(g) The LEA has developed quality administrative guidelines to encourage the reporting of serious crimes to law enforcement agencies (5 points).

(h) School personnel are reporting serious crimes comitted in schools and school buildings to local law enforcement agencies, as evidenced by school and law enforcement crime data (4 points).

(i) The proposed plan satisfies the criteria in EDGAR §§ 100a.202–100a.206, with each criterion having the following weight:

(1) Plan of operation—15 points.

(2) Quality of key personnel—10 points.

(3) Budget and cost effectiveness—5 points.

(4) Evaluation plan—5 points.

(5) Adequacy of resources—5 points.

(20 U.S.C. 1221e–3(a)(1), 3353(b))

**§ 161n.31 Funding procedures.**

(a) In determining the amount of funds awarded to each applicant, the Commissioner gives priority consideration to each applicant according to the total number of points scorded on the funding criteria.

(b) An eligible LEA may apply for funds for projects in subsequent budget periods even though it did not apply for or receive funds for the prior budget period.

(20 U.S.C. 3353(b), 3354(a))

**§§ 161n.32—161n.39 [Reserved]**

## Subpart E—What Conditions Must be Met by a Grantee?

**§ 161n.40 Supplement but not supplant with Federal funds.**

A grantee shall not substitute funds awarded under this program for local funds it would otherwise have expended for project-related activities.

(20 U.S.C. 3353(b)(2))

**§ 161n.41 Limitation on the use of funds for alternations of school facilities.**

A grantee may use no more than 10 percent of the funds awarded under this program for minor alternation of schools and school buildings, including the acquistion, installation, modernization, or replacement of equipment.

(20 U.S.C. 3354(b))

**§§ 161n.42–161n.49 [Reserved]**

## Subpart F—What Compliance Procedures Are Used by the Office of Education?

**§ 161n.50 Suspension of funding.**

(a) The Commissioner suspends the funding of any grantee that fails to adopt the administrative guidelines for reporting serious crimes referred to in § 161n.10.

(b) Suspension procedures are outlined in EDGAR §§ 100a.901–100a.903.

(20 U.S.C. 3354(c))

**§§ 161n.51–161n.59 [Reserved]**

[FR Doc. 79–17675 Filed 6–6–79; 8:45 am]

BILLING CODE 4110–02–M

federal register

Thursday
June 7, 1979

Part VII

# Department of Commerce

## National Telecommunications and Information Administration

## Public Telecommunications Facilities Program; Policy Statement

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Public Telecommunications Facilities Program Policy Statement

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Policy Statement.

**SUMMARY:** The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, is announcing the policies which will goven its implementation of Section 392(f) of the Public Telecommunications Financing Act of 1978 (Pub. L. 95–567, 92 Stat. 2405). Section 392(f) requires that "special consideration" be given to grant applications which would foster the role of women and minorities in public telecommunications entities.

**EFFECTIVE DATE:** This policy Statement shall be effective June 7, 1979.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Cameron, Chief, Public Telecommunications Facilities Division, NTIA, (202) 724–3307, or Kenneth Salomon, Assistant Chief Counsel, NTIA, (202) 395–5616, Room 703, 1800 G Street, N.W., Washington, D.C. 20504.

### Policy Statement

Approved: June 4, 1979.

In the matter of Public Telecommunications Facilities Program, Docket No. 78–1.

1. The Natonal Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, takes this opportunity to state the policies which will govern its implementation of Section 392(f)[1] of the Public Telecommunications Financing Act of 1978 (Pub. L. 95–567, 92 Stat. 2405) (Act). These policies follow the proposals outlined in paragraphs 17–22 of the *Notice of Proposed Rulemeking*, 44 FR 13262, published March 9, 1979, in this proceeding. A *Report and Order* adopting final regulations for the Public Telecommunications Facilities Program was published on May 29, 1979. 44 FR 30898–921. This policy Statement should be read in conjunction with that document and the *Notice*.

2. Before turning to the details of our implementation of Section 392(f), it is first necessary to state our conclusions on several preliminary matters. First, we have chosen to adopt the definition of "minority" contained in the Senate Report accompanying the legislation. Under this program, the following groups of citizens will be considered to be minorities: "American Indians or Alaska Native; Asian or Pacific Islander; Hispanic; and Blacks, not of Hispanic Origin." Sen Rep. No. 95–858, 95th Cong., 2nd Sess. 11 (1978).[2] (*Senate Report*). Second, Section 392(f) speaks in terms of fostering "ownership" of public telecommunications entities by minorities and women. During the course of our rulemaking proceeding, it was pointed out to us that the concept of "ownership" appeared to be inappropriate when dealing with public telecommunication entities. These organizations are public broadcast or noncommercial telecommunciations entities which disseminate public telecommunications service to the public. Section 397(12) of the Act. Since they are either governmental groups of one type or another or nonprofit private groups (Section 397(7)(A)), the concept of ownership in the commercial sense of the word is not fully appropriate. Accordingly, for the purposes of the PTFP, we interpret the words "ownership" (Section 392(f)) and "owned" (Section 390(2)) to mean "control" of an entity through the possession or exercise of the normal incidents of ownership, participation on the governing board, holding of corporate offices, etc.

3. A third and related matter concerns the phrase in Section 392(f) "participation in public telecommunications entities" by minorities and women. We interpret "participation" to include the holding of management and other positions in the entity, especially those concerned with programming decisions and day-to-day operation and management.[3] These categories of positions are not exclusive. They are designed to reflect our intent that all applications which will truly foster meaningful involvement of women and minorities in public telecommunications entities, and programming directed towards the needs and interests of those groups be given special consideration.

4. The major issue remaining is what level of control will trigger special consideration under Section 392(f). As indicated above, we must be assured that applicants requesting Section 392(f) status actually merit it and that women and minorities are not being used as fronts for applications which do not, in fact, merit special consideration. To this end, many urged us to adopt a strict numerical approach: Special consideration would be given only where 51 or more percent of the governing board of an entity consisted of women and/or minorities. We reject this approach since it would prohibit giving special consideration to a meritorious application which furthers the aims of Section 392(f) even though the majority of the applicant's governing body is not composed of minorities and women. Instead, we adopt a policy of giving special consideration where women and/or minorities are in either legal (*i.e.*, more than 50 percent) *or* actual control of the entity. We will consider the applicant's reported composition of its governing body and the individuals who hold management-level and policymaking positions in the organization. This approach will assure that entities receiving special consideration will legitimately merit that consideration and will, most importantly, provide an increase in educational, cultural and related programming responsive to the needs of these groups.[4]

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[1] Section 392(f) provides:

In establishing criteria for grants pursuant to section 393 and in establishing procedures relating to the order of priority established in subsection (e) in approving applications for grants, the Secretary shall give special consideration to applications which would increase minority and women's ownership of, operation of, and participation in public telecommunications entities. The Secretary shall take affirmative steps to inform minorities and women of the availability of funds under this subpart, and the localities where new public telecommunications facilities are needed, and to provide such other assistance and information as may be appropriate.

[2] Several groups urged that the definition of "minority" be expanded to include the handicapped and elderly. Our reading of the Act and its surrounding legislative history requires the conclusion that Congress intended to confer special consideration only on those groups identified in the *Senate Report*. *See generally*, the comments of Senators Hollings and Cranston during Senate debate on the Act. 146 *Cong. Rec.* S. 15432, S. 15454–455 (daily ed. Sept. 19, 1978). We are without authority to broaden that definition.

[3] The FCC and the courts have held, and we agree, that minority ownership and managerial participation are likely to result in programming directed towards minority audiences. *Garrett Broadcasting Service* v. *FCC*, 515 F. 2nd 1056, 1063 (D.C. Cir. 1975); *TV–9 Inc.*, v. *FCC*, 495 F. 2nd 929 (D.C. Cir. 1973); *cert denied*, 419 U.S. 986 (1974). *See also Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2nd 979 (1978); and NTIA Petition for Issuance of Policy Statement or Notice of Inquiry, filed January 31, 1978 with the FCC.

[4] We emphasize, however, that the goal of the Act is to provide public telecommunications services to the public as a whole. Thus, while the Act does not prevent an applicant from proposing to "target a specific segment of the public for its programming" (*i.e.*, the New York City Black community) this does not mean that the funding priorities of the Act and the goals of public broadcasting are not relevant.

Only after the [Section 393(b)] priorities have been addressed * * * [should] the Secretary of Commerce give serious consideration to extending support to entities proposing to serve specific interests within the public at large. Even then these specific interests must closely fit with the general purposes and objectives of public broadcasting. *Senate Report* at 8–9.

5. Applications proposing substantial but less than controlling minority and women governing body memberships will also be granted favorable consideration. We will look with favor on applicants with substantial (20 percent or more) representation of women and minorities on their governing bodies, and with women and minorities in full-time managerial positions. The greater the percentages and number of decision-making program related positions, the stronger the applicant's advantage. *NTIA Petition for Issuance of Policy Statement or Notice of Inquiry*, filed January 31, 1978 with the FCC at 15–16.

6. It should be clear that we view Section 392(f) as a modifier of the statutory priorities listed in Section 393(b) of the Act and the list of funding priorities set forth in Appendix B of the *Report and Order*, 44 Fed. Reg. at 30920–921. Thus, if all other relevant factors were equal (for example, priority listing, cost efficiency, etc.) and we were able to award only one grant, we would fund the application that best fosters the role of minorities and women. It must be stressed, however, that applicants seeking the benefit of Section 392(f) must meet the eligibility requirements of the Act and Regulations. In other words, Section 392(f) does not relieve applicants of the basic background, planning and detail work required to create a public telecommunications entity and prepare a feasible, comprehensive and meaningful application.

7. Section 392(f) also imposes on the Department of Commerce an obligation to take "affirmative steps" to advise minorities and women of PTFP funds and localities where new facilities are needed. We have undertaken to advise relevant groups of the existence of Section 392(f) in a variety of ways. We have assembled a specialized mailing list of womens' and minority groups and have sent those on the list a notice outlining Section 392(f); all applicants on deferred status have also been advised of the provision and encouraged to determine their eligibility under it; a fact sheet on the Act in general and Section 392(f) in particular was prepared and sent to various communications and education trade journals and to publications which address the needs and interests of minorities and women. Moreover, a Special Concerns Branch has been created in NTIA's Public Telecommunications Facilities Division which has been specifically assigned responsibility under Section 392(f). The Chief of the Branch has attended and will continue to attend national and regional meetings of organizations representing these groups of citizens.

8. Additionally, Section 392(f) directs the Department to provide "such other assistance and information as may be appropriate" to minorities and women. Equal assistance and access to the program will be assured for all potential applicants. The PTFP staff will, therefore, be available to all applicants to explain regulations and application requirements, and to advise applicants on the completion of necessary forms. This assistance will not include an evaluation of the merits or comparative position of applications.

**Henry Geller,**

*Administrator, National Telecommunications and Information Administration.*

[FR Doc. 79-17724 Filed 6-6-79; 8:45 am]

BILLING CODE 3510-60-M

federal register

Thursday
June 7, 1979

Part VIII

# Department of Health, Education, and Welfare

## Office of Education

## Preschool Partnership Program; Proposed Rule

**DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

**Office of Education**

**[45 CFR Part 161d]**

## Preschool Partnership Program

**AGENCY:** Office of Education, HEW.

**ACTION:** Proposed regulations.

**SUMMARY:** The Commissioner of Education proposes to amend Title 45 of the Code of Federal Regulations by adding a new Part 161d for the Preschool Partnership Program enacted by the Education Amendments of 1978. The proposed regulations—which were developed in consultation with the Assistant Secretary for Human Development—will govern the awarding of direct discretionary grants designed to establish programs of educational services for preschool children and their parents or other care-givers.

**DATES:** All comments on the proposed regulations must be received on or before August 6, 1979. Public meetings will be held in each of the ten regions on July 9, 1979. The time for these meetings is from 9 a.m.–12 Noon.

**ADDRESSES:** Comments should be addressed to Dr. Frances Yvonne Hicks, U.S. Office of Education, 400 Maryland Avenue, SW., (FOB–6) Room 2083, Washington, D.C. 20202. All written comments submitted will be available for public inspection at this address between 8:30 a.m. and 4 p.m., Mondays through Fridays, except for Federal holidays. The locations for the public meetings are:

Region I—Boston—Boston School Department, Administration Building, Boston Committee Hearing Room, 26 Court Street, Boston, Massachusetts.
Region II—New York—Public School 142, 100 Attorney Street, New York City, New York.
Region III—Philadelphia—University City, 36th & Chestnut Streets (Holiday Inn), Philadelphia, Pennsylvania.
Region IV—Atlanta—Suite 2221, 101 Mariette Tower Bldg., Atlanta, Georgia.
Region V—Chicago—Center for Urban Education, 160 West Wendell Street (1050 North Wells), Chicago, Illinois.
Region VI—Dallas—William Travis Elementary School, 3001 McKinney Avenue, Dallas, Texas.
Region VII—Kansas City—Board of Education Building Auditorium, 1211 McGee Street, Kansas City, Missouri.
Region VIII—Denver—George Washington High School, Lunch Room, 655 South Monaco Street, Denver, Colorado.
Region IX—San Francisco—Room 209, Federal Office Bldg., 50 United Nations Plaza, San Francisco, California.
Region X—Seattle—Auditorium Administrative & Service Center, Seattle School District, 815 Fourth Avenue North, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Dr. Frances Yvonne Hicks, (202) 245–8118.

**FOR INFORMATION ON REGIONAL HEARINGS CONTACT:** The appropriate Regional Commissioner for Educational Programs listed below:

Region I, Boston, Dr. Thomas J. Burns, (617) 223–7500.
Region II, New York, Dr. William D. Green, (212) 264–4370.
Region III, Philadelphia, Dr. Albert C. Crambert, (215) 596–1001.
Region IV, Atlanta, Dr. William L. Lewis, (404) 221–2063.
Region V, Chicago, Ms. Juliette Noone Lester, (312) 353–5215.
Region VI, Dallas, Mr. Edward J. Baca, (214) 767–3626.
Region VII, Kansas City, Dr. Harold Blackburn, (816) 374–2276.
Region VIII, Denver, Dr. John Runkel, (303) 837–3544.
Region IX, San Francisco, Dr. Caroline Gillin, (415) 556–4920.
Region X, Seattle, Mr. Allen Apodaca, (206) 442–0460.

**SUPPLEMENTARY INFORMATION:**

### A. No Funds

The Commissioner is required by law to publish regulations for programs authorized by Congress. Please note that the Congress has not appropriated funds to operate this program in Fiscal Year 1979, and the President's budget does not request funds for Fiscal Year 1980.

### A–1. Background

The Preschool Partnership Program reflects a growing awareness that a child's initial learning experiences at home, and subsequent experiences in preschool group settings, contribute to future academic success. It recognizes the importance of parents as the child's first teachers. It emphasizes the role of schools and other community agencies in enabling parents, prospective parents, and child care-givers to develop the competencies with which to discharge their childrearing responsibilities in an effective manner.

The program will benefit from the long experience of Project Head Start in providing educational services for preschool children and their families. Because children from birth to three years of age are eligible for this program there is an opportunity to demonstrate the impact of these services to children younger than those participating at present, and to children not served under existing Head Start projects.

The partnership that is addressed by this program applies to several types of relationships that will be developed through the various projects. Home and school will be involved in instructional services and their evaluation. Community agencies will provide coordinated services to children and their families.

A working partnership will be established among the generations involved—not only between parents and children but also involving teachers and community members at various levels in the projects. This will be true of those projects enabling adolescents to learn about child growth and development and the responsibilities of child care through special courses linking secondary and early childhood education in a practicum experience.

University faculty members or researchers may also participate in the development of new curriculum materials for use in the home or in secondary school classes.

### B. Overview of Major Provisions

The proposed regulations state the purpose of the Preschool Partnership Program, describe the nature of projects that the Commissioner funds, set forth the criteria for judging the quality of project applications, and stipulate the essential requirements for projects.

*Nature of Projects*

A variety of pilot projects to provide for an easier and more successful transition to formal schooling for certain preschool children are eligible for funding under this program. Two major categories of projects are (1) projects to encourage the transition of children from primarily low-income families to regular school projects, and (2) developmental projects in parent/early childhood and family education:

(a) *Transition projects for three- and four-year old children and their parents, families or guardians, primarily from low-income families.* These projects shall involve the cooperation of LEAs and local Head Start projects. During the first year they provide, to participating children and adults, educational services that include instruction, counseling, and testing primarily in their home. During the following year(s) and prior to formal schooling the project shall involve primarily school-based instruction, testing and evaluation. In those areas in which kindergarten is not available, a total three-year preschool program of educational services may be necessary. During the first two years of formal schooling the projects concentrate on assessing the achievement of children.

As provided in § 161d.7 of the proposed regulations, the applicant is eligible to apply for initial and continued funding for any subsequent fiscal year

only if the grantee begins a new participant group for that year and maintains educational services for all groups until each group has experienced the full program, including testing and assessment of achievement at the end of each of the first two years of formal schooling. The applicant agrees to these conditions in order to receive funding for the initial activity year. Funding for the subsequent year(s) will be at the initial level, if sufficient funds are available. Note that first year funding includes start-up costs which are not repeated in subsequent years of the project; therefore, it is antiicipated that continued Federal funding of a project at the first year level will partially cover the costs of incorporating new participant groups. The remaining costs are assumed by the applicant. The Commissioner especially invites public comment on this provision.

(b) *Developmental projects in parent/early childhood and family education.* A broad variety of projects are eligible under this category. There are no income limitations for these projects. All must include a program of educational services for children and their parents, families, or guardians. These services may be developed and offered at various levels and types of institutions; for example—

(1) Home-based or center-based instruction, counseling, and testing for the parents, families or guardians of infants or toddlers;

(2) Secondary school courses for school-age parents, or courses in child development and parenthood education to acquaint students with child-care related careers or to prepare them for their own potential parenthood through programs involving instruction and practical experience;

(3) University-based projects to develop training courses or instructional materials for the parents of young children or for the staff of child-care centers, perhaps as part of an existing demonstration program in early childhood education; and

(4) Research studies and demonstration projects concerning early childhood, parenting practices, or techniques for the early identification and treatment of barriers to learning.

The Commissioner awards quality points to applicants who, in recognition of the need for services to exceptional children, include these children in their projects at least in proportion to their number in the community—as evidenced by valid surveys or other appropriate sources of data.

*Participation of Non-Low-Income Children*

The Commissioner seeks to improve the transition to formal schooling for children from low-income families by encouraging the inclusion of a limited number of non-low-income participants in Preschool Partnership Program projects. Because the statutory requirement directs the program to low-income children this participation is limited to 25 percent except when unusual circumstance may lead the Commissioner to approve an exemption. These circumstances include: (1) Evidence that a greater percentage of non-low-income participants further assist low-income children in making the transition to formal schooling, (2) evidence that a higher percentage of non-low-income participants does not reduce the quality and quantity of services provided to low-income children, and (3) the inability of the applicant or grantee to obtain 75 percent low-income participation. In no case does participation by non-low-income participants exceed 50 percent.

This approach is designed to enhance the flexibility of the program in meeting the needs of a variety of communities while meeting Congressional intent that this portion of the program focus primarily upon low-income students. The approach is also designed to allow the percentage of non-low-income participation to be at a higher level than Project Head Start (10 percent) for children of less than school year age and at a lower level than Follow Through (33 percent). The purpose is to provide flexibility though the Preschool Partnership Program for further interrelating Head Start and Follow Through activities. The Office of Education especially seeks comment on this provision.

*Participation of Exceptional Children*

The proposed regulation awards points for the participation of exceptional children. "Exceptional children" is defined broadly to include not only gifted, talented, and handicapped children but also "any other children needing a program of educational services substantially different from that required for the majority of preschool children." Examples of the latter might be slow learners, bilingual children or culturally deprived children, depending on the population of the area the project would serve. The Commissioner especially seeks comments on this broad definition.

*Criteria for Reviewing Applications*

The program encourages the development of projects that provide linkage among the various preschool programs in a community. Thus, the Commissioner's criteria for review of applications include special consideration for projects that involve cooperation with existing preschool programs within the project's service community.

This criterion also allows additional points for the extent to which each preschool partnership project is developed and operated in cooperation with appropriate SEAs and LEAs, as well as with other public and private organizations. National studies such as a Rand report (*Federal Programs Supporting Education Change*, Vol. IV; *The Findings in Review*) have shown that the involvement of SEAs and LEAs in the development and expansion of innovative projects substantially increases the likelihood that their findings and practices will be incorporated into continuing school programs.

*Additional Requirements for Projects*

The proposed regulations do not contain certain types of requirements. Those requirements will be covered in the Education Division's General Administrative Regulations (EDGAR), which will replace the General Provisions for Office of Education Program Regulations and which were published as a notice of proposed rulemaking (NPRM) on May 4, 1979 (44 FR 26308).

Anyone wanting to comment on these requirements should do so in response to the EDGAR NPRM, rather than to this NPRM.

The following items applicable to this program will now be among those covered generally in EDGAR:

How to apply for a grant.

How grants are made.

Certain conditions that must be met by a grantee.

The administrative responsibilities of a grantee.

The Office of Education's procedures to assure compliance.

**Invitation To Comment**

A public meeting on this Notice of Proposed Rulemaking will be held in each of the ten Federal regions. Since we expect to schedule public meetings for several regulations on the same day, at the same place, we need to get an idea of how many persons are interested in speaking about these regulations. If you are interested in commenting at a

public meeting, we encourage you to call the appropriate Regional Commissioner of Education, who will schedule a time for your comments. Persons who do not notify the Regional Commissioner of their intention to comment will be given an opportunity to speak. Those persons making presentations will be called upon according to their prearranged schedule, or if not prearranged, in the order of registration.

We expect that comments on these proposed regulations will be first on the agenda of the public meeting.

In addition, interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

All written comments submitted in response to this notice will be available for public inspection, both during and after the comment period, in Room 2083, FOB–6, 400 Maryland Avenue, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

As required by Section 431(a) of the General Education Provisions Act (20 U.S.C. 1232(a)), a citation of statutory authority for each section of the proposed regulations has been placed in parentheses on the line following the text of the section. Reference in these citations of authority relate to sections of the Elementary and Secondary Education Act of 1965, as enacted by Pub. L. 95–561.

(Catalog of Federal Domestic Assistance No. has not yet been assigned to the Preschool Partnership Program)

Dated: May 3, 1979.

**Ernest L. Boyer,**

*U.S. Commissioner of Education.*

Approved: May 18, 1979.

**Joseph A. Califano, Jr.,**

*Secretary of Health, Education, and Welfare.*

It is proposed that Title 45 of the Code of Federal Regulations be amended by adding a new Part 161d, to read as follows:

## PART 161D—PRESCHOOL PARTNERSHIP PROGRAM

**Subpart A—General**

Sec.

161d.1 Preschool Partnership Program.
161d.2 Eligible parties.
161d.3 Regulations that apply to the Preschool Partnership Program.
161d.4 Definitions.

**Subpart B—Projects Assisted Under this Program**

161d.5 Nature of projects.
161d.6 Participation of non-low-income children.
161d.7 Nature of cooperations.
161d.8. Project duration.
161d.9 Transition projects—conditions for initial funding and for continued funding at first-year-level.

**Subpart C—How To Apply for a Grant**

161d.10 Application requirements.

**Subpart D—How a Grant Is Made**

161d.11 Criteria for review of applications.

**Subpart E—Conditions To Be Met by a Grantee**

161d.12 Allowable cost limitations.
161d.13 Participation by private school children.
Appendix D—The Legislation

**Authority:** Title III, Part D, Sec. 325, Elementary and Secondary Education Act of 1965, as enacted by Pub. L. 95–561.

### Subpart A—General

**§ 161d.1 Preschool partnership program.**

The Preschool Partnership Program provides Federal Assistance for the establishment of pilot projects that will offer special educational services to the families of preschool children to help in the children's successful transition to formal schooling and thereby improve their long-term achievement.

(20 U.S.C. 2971)

**§ 161d.2 Eligible parties.**

The Commissioner may make grants to State and local educational agencies (SEAs and LEAs) and other public agencies and nonprofit private organizations or institutions, including Project Head Start grantees.

(20 U.S.C. 2942(a))

**§ 161d.3 Regulations that apply to the preschool partnership program.**

The following regulations are applicable to this program:

(a) *General regulations.* (1) The education Division General Administrative Regulations (EDGAR), Part 100a (Direct Grant Programs) and Part 100c (Definitions; Freedom of Information Act) apply to this program.

(2) The HEW grant regulations in Part 74 of this title.

(b) *Specific regulations.* The regulations in this part (45 CFR Part 161d).

(20 U.S.C. 1221e–3(a)(1))

**§ 161d.4 Definitions.**

(a) *General.* The following terms used in this part are defined in EDGAR, Part 100c:

Applicant
Application
Commissioner
Department
Elementary School
Local Educational Agency
Materials
Minor Remodeling
Nonprofit
Private
Project
Project Period
Public
Secondary School
State
State Educational Agency

(b) *Specific.* Terms used in this part are defined as follows:

"Acitivity year" means the year of involvement by a project participant.

"Exceptional children" means gifted and talented children, handicapped children, and any other children needing a program of educational services substantially different from that required for the majority and other preschool children.

"First two years of formal schooling" means the initial two-year period of general education for which a State commonly provides public support; either kindergarten and first grade, or first and second grade.

"Guardian" means a person, other than a parent or family member, who has substantial responsibility for a participating child.

"Parent" means a father, mother, foster parent, or adoptive parent.

"Preschool means educational programs organized for children younger than those usually served by the first two years of formal schooling.

"Participant group" means eligible children and their parents or guardians and family members.

"Project Head Start" means local Project Head Start grantees and delegate agencies.

"Low-income families" means those families—

(a) Whose annual income falls at or below the State income poverty guidelines for determining eligibility for free meals or free milk under the National School Lunch Act;

(b) Who are receiving public assistance, or

(c) Who are eligible for participation in Project Head Start.

"Program of educational services" means instruction, counseling, testing, assessment of health status and needs, and referral for followup. It does not

include the provision of any needed medical, dental, nutritional, or social services. Instruction addresses the knowledge, language, physical, social and emotional development of children participating in the project, and enhancing child-care competencies of parents and other caregivers.

"Testing and assessment" means the collection, analysis, and reporting of information and other data relating to the accomplishment of project objectives.

(20 U.S.C. 2971; 20 U.S.C. 1221e-3(a)(1))

## Subpart B—Projects Assisted Under This Program

### § 161d.5 Nature of projects.

(a) The Commissioner awards grants for the following types of pilot projects:

(1) *Transition projects for preschool children of low-income families.* Each of these projects, which shall be administered in cooperation with LEAs and Project Head Start and may involve cooperation with other preschool programs, must provide a continuous program including—

(i) In the initial activity year, a program of educational services to children of ages three or four, from primarily low-income families, and their parents, guardians, or family members. These services must be provided primarily in the home;

(ii) In subsequent activity year(s), an appropriate program of educational services to the adults and children who participated in the first year, to be conducted primarily on the premises of an elementary school and to continue until the first year of formal schooling; and

Note.—In those areas in which kindergarten is not available, a total three-year preschool program of educational services may be necessary.

(iii) At the end of each of the first two years of formal schooling the project activity concentrates on testing and assessment of the achievement of project children.

(2) *Development projects in parent/early childhood and family education.* These projects must provide a program of educational services to selected groups of children under kindergarten age and to parents, secondary school students in education for parenthood programs, family members, or guardians. The projects must develop model approaches to early childhood and family education and may involve research, materials development, staff training, or other related program development activities.

(b) Project components conducted primarily in a child's home, but not directed toward the child, concentrate on enhancing those competencies which will enable parents, family members, or guardians to foster the child's learning and development.

(20 U.S.C. 2971(a), (b) and (c))

### § 161d.6 Participation of non-low-income children.

(a) The Commissioner permits non-low-income children and their parents, guardians, or families to enroll in projects described in § 161d.5(a)(1) in numbers constituting up to 25 percent of any single participant group.

(b) The Commissioner may give prior approval for applicants or grantees to include more than 25 percent non-low-income participation only if the applicant or grantee demonstrates that—

(1) The presence of a higher percentage of non-low-income participants further assists low-income children in making the transition to formal schooling;

(2) It made a good faith effort to obtain 75 percent low-income participation but could not do so; and

(3) The inclusion of a higher percentage of non-low-income children does not reduce the quality and quantity of services provided to low-income children.

(c) In no case does non-low-income participation exceed 50 percent.

(20 U.S.C. 2971)

### § 161d.7 Nature of cooperation.

Any project designed under § 161d.5(a)(1) must include the cooperation of LEAs and Project Head Start and may include that of other preschools and community organizations. Cooperation includes the following activities:

(a) Planning a project with organizations and individuals having similar objectives and concerns, including appropriate private preschools and elementary schools.

(b) Sharing information, facilities, staff, services, or other resources.

(c) Developing a plan for referral to cooperating agencies for health care or other services required but not funded from the project grant.

(d) Obtaining agreement from other related programs on responsibility for specific activities that will increase the impact of funds available during and after the project period.

(20 U.S.C. 2971(a), (b), and (c))

### § 161d.8 Project duration.

(a) The Commissioner determines the duration of Federal assistance on a case-by-case basis. Under § 161d.5(a)(1) the Commissioner may approve funds for up to five years. Under § 161d.5(a)(2) the Commissioner generally awards funds for no more than three years, and in no case for more than five years.

(b) The Commissioner reviews an application for a multi-year project in accordance with EDGAR, §§100a.219 and 100a.220.

(20 U.S.C. 1221e-3(a)(1))

### § 161d.9 Transition projects—Condition for initial funding and for continued funding at first-year-level.

(a) This section applies to projects described in § 161d.5(a)(1). For these projects the grantee must enroll a new and comparable participant group for each year of Federal project support. Funding for each year of the grant will be at the first-year-level—if sufficient funds are available.

(b) The Commissioner approves funding an application only if the following conditions are met:

(1) The applicant develops a feasible plan and demonstrates the capacity to begin a new and comparable participant group for each year of Federal project support anticipated.

(2) The applicant demonstrates the capacity and intent to continue the proposed project activities through the first two years of formal schooling for each participant group it begins.

(c) The Commissioner approves continued funding only if the grantee—

(1) Enrolls a new participant group for each year of Federal project support; and

(2) Demonstrates that it is conducting the approved project activities through the first two years of formal schooling for each participant group previously enrolled during the period of Federal project support.

(d) The grantee must use whatever financial resources, in addition to the grant award, which are necessary for it to begin new participant groups after the first grant year and to complete the approved project activities for each participant group enrolled during the period of Federal project support.

(20 U.S.C. 2971(b))

## Subpart C—How To Apply for a Grant

### § 161d.10 Application requirements.

The Commissioner considers making a grant to an eligible applicant only if the applicant prepares and submits an application according to—

(a) Regulations governing the Preschool Partnership Program (45 CFR Part 161d) in this part and the general provisions regulations in EDGAR.

(b) The procedures contained in the Notice of Closing Date for Receipt of Applications.

(c) The instructions and forms included in the application package.

(20 U.S.C. 1221e-3(a)(1); 1221e-3(b))

## Subpart D—How a Grant Is Made

### § 161d.11 Criteria for review of applications.

The Commissioner reviews applications for initial project grants on the basis of the criteria in this section. The maximum possible score for all criteria is 100 points. The maximum possible score for each criterion reflects the degree of importance assigned to that criterion by the Commissioner.

(a) *General criteria.* See EDGAR §§ 100a.201–206, for general criteria applicable to direct project grants under this part. However—

The Commissioner assigns to the quality of the proposed plan of operation a maximum of 20 points rather than the 10 assigned in EDGAR; and to the quality of the evaluation plan on project effectiveness, 10 points rather than the 5 points in EDGAR. The general criteria in EDGAR are therefore assigned a total of 50 possible points.

(b) *Specific criteria.* The Commissioner awards up to 50 points to the following criteria for the Preschool Partnership Program:

(1) The extent to which a project design indicates an effective rationale and set of procedures toward establishing one or more models that will contribute to the successful transition of eligible preschool children to formal schooling. This includes the likelihood that the results of the project will be of potential use to a variety of groups throughout the Nation. (20 points)

(2) The extent to which the applicant demonstrates the ability and develops a feasible plan to incorporate the results of the project into its continuing activities, or those of cooperating agencies, institutions, and organizations, after Federal funding ends. (10 points)

(3) The extent to which the project includes exceptional children—at least in proportion to their existence, as evidenced by valid surveys or other appropriate data sources, within the defined project service community—in project activities appropriate to their unique needs. (10 points)

(4) The extent to which the project is developed and operated in cooperation with—(10 points)

(i) Parents representing the program participants;

(ii) Appropriate SEAs and LEAs;

(iii) Other public and private organizations, including health and social service agencies, and existing preschool and private elementary school programs within the defined project service community; and

(iv) Project Head Start.

(20 U.S.C. 2971 (a), (b) and (c))

## Subpart E—Conditions To Be Met by a Grantee

### § 161d.12 Allowable cost limitations.

(a) Cost for stipends, released time, or the employment of substitutes to enable educational personnel to participate in the project activities, and costs for minor remodeling are allowable in exceptional cases only with the approval of the Commissioner.

(b) The Commissioner approves these costs only—

(1) If the proposed project receives fifteen points in its plan for easing the transition of preschool children to formal school (§ 161d.9(b)(1));

(2) If the proposed project receives 4 points in its plan for budget and cost effectiveness (EDGAR § 100a.204) including consideration of the costs proposed for these purposes; and

(3) If not allowing these costs would tend to defeat the purposes of the Act.

(20 U.S.C. 2971; 20 U.S.C. 1221e-3(a)(1))

### § 161d.13 Participation by private school children.

Any grant is subject to the requirements in Section 302(b) of the Elementary and Secondary Education Act of 1965 concerning consultation with private school officials and participation by private school children.

(20 U.S.C. 2942(b))

## Appendix—The Legislation

*"Part D—Preschool Partnership Programs*

*"Establishment of Program*

"Sec. 325. (a) The Commissioner is directed to establish, in cooperation with the Assistant Secretary for Human Development of the Department of Health, Education, and Welfare, a program of cooperative pilot projects between local educational agencies and Project Head Start, as authorized by the headstart-Follow Through Act, which will provide a smoother and more successful transition to formal schooling for certain preschool-aged children, and thereby improve their long-term achievement in elementary school.

"(b) Projects established under this program will be designed to achieve the purposes of subsection (a) by—

"(1) providing to a limited number of children aged three to four, inclusive, of low-income families and to their parents, families, or guardians a program of educational services including instruction, counseling, and testing, to be conducted primarily in the child's home;

"(2) providing to children and adults who have participated in the services described above, during the following year appropriate educational services, testing, and counseling, to be primarily conducted on the premises of an elementary school; and

"(3) providing a coordinated program of testing and assessment, along with such other evaluation procedures as the Commissioner and the Assistant Secretary shall deem appropriate, designed to assess the achievement of children during their participation in the program and subsequently at the end of each of the first two years of formal schooling.

"(c) Funds provided under this part may also be used to fund early childhood and family education programs for children below kindergarten age. Such programs may include—

"(1) the identification of potential barriers to learning;

"(2) education of parents in child development, including education of parenthood programs for secondary school students; and

"(3) home-based programs of early childhood and family education.

"(d) Not less than 10 percent of the funds made available for purposes of section 303 for each fiscal year shall be made available for purposes of this part.

[FR Doc. 79-17679 Filed 6-6-79; 8:45 am]
BILLING CODE 4110-02-M

# Reader Aids

Federal Register

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Thursday, June 7, 1979

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

| Monday | Tuesday | Wednesday | Thursday | Friday |
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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

### Rules Going Into Effect Today

**ENERGY DEPARTMENT**

Federal Energy Regulatory Commission—

26855 5–8–79 / Natural gas curtailment; essential agricultural users and high-priority users

**NUCLEAR REGULATORY COMMISSION**

26850 5–8–79 / General license requirements for any person possessing formula quantities of strategic special nuclear material in transit subject to certain requirements

### List of Public Laws

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–375–3030).

**Last Listing May 31, 1979**

**H.R. 1787 / Pub. L. 96–16** To authorize a supplemental appropriation to the National Aeronautics and Space Administration for research and development. (Jun. 4, 1979; 93 Stat. 33) Price $.60.

**H.R. 2520 / Pub. L. 96–17** To amend the National Ocean Pollution Research and Development and Monitoring Planning Act of 1978 to authorize appropriations to carry out the provisions of such Act for fiscal year 1980. (Jun. 4, 1979; 93 Stat. 34) Price $.60.

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