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federal register

Friday
October 7, 1983

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Federal Reserve System

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Food and Drug Administration

Crop Insurance
Federal Crop Insurance Corporation

Endangered and Threatened Wildlife
Fish and Wildlife Service

Ethylene Dibromide
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Indians—Business and Finance
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Health Care Financing Administration

Natural Gas
Federal Energy Regulatory Commission

Occupational Safety and Health
Occupational Safety and Health Administration

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Presidential Documents

Title 3—

The President

Proclamation 5114 of October 5, 1983

Myasthenia Gravis Awareness Week, 1983

By the President of the United States of America

A Proclamation

Americans with myasthenia gravis cannot move about freely, as most of us can. This chronic neuromuscular disease, which has no known cause, produces progressive muscular weakness and abnormally rapid fatigue of the voluntary muscles. Myasthenia gravis can also result in a life-threatening medical crisis, particularly when a patient's throat muscles are affected.

Myasthenia gravis can strike any person, at any age, at any time. At least 100,000 people have been diagnosed as having this disorder, and scientists estimate that another 100,000 persons with myasthenia gravis have not yet been diagnosed.

In the past, myasthenia gravis patients died or were severely incapacitated by their weakened muscles. Several forms of treatment developed by scientists in private and Federal research institutions have led to improved management of the disease. Research supported by the Myasthenia Gravis Foundation, Inc., in collaboration with the Neurological Institute of the National Institutes of Health, has made important contributions to the management of this neurological disorder. Today, myasthenia gravis patients can expect to lead nearly normal lives.

Although much has been learned about myasthenia gravis, we still do not have the means to prevent this crippling disease. In order that the public should be made aware of the suffering endured by those who have the disease, the Congress, by Senate Joint Resolution 140, has authorized and requested the President to proclaim the week of October 2 through October 8, 1983, as "Myasthenia Gravis Awareness Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 2, 1983, as Myasthenia Gravis Awareness Week. I call upon all government agencies, health organizations, and the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of October, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 83-27558
Filed 10-5-83; 4:13 pm]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 432]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 240,000 cartons during the period October 9–15, 1983. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: October 9, 1983.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona lemon crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on October 4, 1983, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for all grades of lemons is good on larger sizes and easier on smaller sizes.

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 purposes of the Act.

Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.732 is added as follows:

§ 910.732 Lemon regulation 432.

The quantity of lemons grown in California and Arizona which may be handled during the period October 9, 1983, through October 15, 1983, is established at 240,000 cartons.

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

Dated: October 6, 1983.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 83-27602 Filed 10-6-83; 11:28 am]
BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 350 and 362

[Docket No. 83-026N]

Reimbursable Services for Export Inspection and Certification; Notice of Policy

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Rule related notice.

SUMMARY: Ths notice reiterates the policy of the Food Safety and Inspection Service (FSIS) regarding reimbursable services for export inspection and certification of meat and poultry products. This is necessary in order to advise exporters that, due to an increasing demand for special inspection requirements being placed by importing countries upon U.S. meat and poultry products destined for export, their costs for qualifying such products for export could increase.

FOR FURTHER INFORMATION CONTACT: Mr. L. G. Skufe, Director, Resource Management and Analysis Staff, Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. (202) 447–5261.

SUPPLEMENTARY INFORMATION: Mandatory inspection by U.S. Government inspectors of meat and poultry slaughtered and/or processed at official establishments is provided for under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products, and the ordinary costs of providing for it are borne by the Government. However, other than ordinary costs for these inspection services may be incurred to accommodate the business needs of particular establishments; i.e., furnishing services on official holidays or on an overtime basis. These costs are recoverable by FSIS, and are set forth in

§ 307.5 of the Federal meat inspection regulations (9 CFR 307.5) and § 381.38 of the poultry products inspection regulations (9 CFR 381.38).

From time to time, special inspection requirements are placed by importing countries upon meat and poultry products that are not within the scope of mandatory inspection, such as those to meet certain religious or foreign importers' specifications. Therefore, FSIS also provides a range of voluntary inspection and certification services, the costs of which are totally recoverable by FSIS. These services are provided under Subchapter B of FSIS regulations, Voluntary Inspection and Certification Service of Meat and Poultry (9 CFR Part 350 *et seq.*), and assist in the marketing of various animal products and byproducts not covered under mandatory inspection.

Sections 350.3 and 362.2 of Subchapter B (9 CFR 350.3 and 362.2) describe, in part, the certification services available for any person intending to export meat or poultry products. The fees charged for these services, as well as other voluntary services, are set forth in §§ 350.7(c) and 362.5 (9 CFR 350.7(c) and 362.5(c)).

There appears to be an increase in the number of special inspection requirements being placed by importing countries upon U.S. meat and poultry products that are to be exported. By this notice, FSIS is emphasizing to exporters that the cost of meeting these requirements is the exporter's responsibility, and that any increased inspection cost required to make products eligible for export will be passed on to the exporter requesting these services.

Done at Washington, DC, on October 3, 1983.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 83-27384 Filed 10-6-83; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket No. R-0483]

Interest on Deposits; Regulation Q; Technical Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical amendments.

SUMMARY: Pursuant to its authority under section 19 of the Federal Reserve Act, as amended, the Board has amended Regulation Q—Interest on Deposits (12 CFR Part 217) to incorporate rules of the Depository Institutions Deregulation Committee ("DIDC"), adopted pursuant to the Depository Institutions Deregulation Act of 1980 (Title II of Pub. L. 96-221). The amendments to Regulation Q are technical in nature and conform the Board's rules to those of the DIDC.

EFFECTIVE DATE: October 1, 1983.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625), or Paul S. Pilecki, Senior Counsel (202/452-3281), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Depository Institutions Deregulation Act of 1980 (Title II of Pub. L. 96-221) transfers to the DIDC the authority conferred by section 19(j) of the Federal Reserve Act (12 U.S.C. 371b) upon the Board (and the similar authorities of the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board, which are contained in other statutes) to establish rules concerning the payment of interest on deposit accounts.

The Board has amended its Regulation Q to bring it into conformity with actions taken by the DIDC. The following table presents the regulatory provisions that have been affected by the DIDC's actions:

DIDC rule	Regulatory provision amended
1204.103—Penalty for Early Withdrawals.	217.4(d).
1204.123—Payment of Interest on Time Deposits Issued on or after October 1, 1983.	217.1(h), 217.7 (a), (b), (d), (h).
1204.121—Seven to 31-Day Time Deposits.	217.7(e).

DIDC rule repealed	Regulatory provision amended
1204.104—26 Week Money Market Time Deposits of Less Than $100,000.	217.6(i), 217.7(f).
1204.106—Time Deposits of Less Than $100,000 with Maturities of 2½ Years to Less Than 4 years.	217.7(g).
1204.112—Time Deposits of Less Than $100,000.	217.7(b).
1204.114—Phaseout of Finders Fees.	217.147.
1204.116—Tax-Exempt Savings Certificates.	217.3(a), 217.7(i).
1204.118—Individual Retirement Accounts and Keogh (H.R. 10) Plan Deposits of Less Than $100,000.	217.7(e).
1204.119—Time Deposits of Less Than $100,000 with Original Maturities of 3½ Years or More.	217.7(k).
1204.120—91-Day Time Deposits of Less Than $100,000.	217.6(i), 217.7(j).

Because of the technical nature of amendments conforming Regulation Q to actions of the DIDC, the Board finds that application of the notice and public participation provisions of 5 U.S.C. 553 to these actions is unnecessary and contrary to the public interest, and that good cause exists for making these actions effective October 1, 1983.

List of Subjects in 12 CFR Part 217

Advertising, Banks, banking, Federal Reserve System, Foreign banking.

PART 217—[AMENDED]

Pursuant to its authority under section 19 of the Federal Reserve Act (12 U.S.C. 461, 371a, and 371b), the Board amends Regulation Q (12 CFR Part 217), effective October 1, 1983, as follows:

1. Section 217.1 is amended in paragraph (b)(1)(iii) by removing "217.7(l)" and inserting "217.7(e)" in its place, in paragraph (e)(4) by removing "217.7(m)" and inserting "217.7(g)" in its place, and by revising paragraph (h) to read as follows:

§ 217.1 Definitions.

* * * * *

(h) *Obligations issued by the parent bank holding company of a member bank.* (1) For purposes of this part, the "deposits" of a member bank also includes an obligation that is (i) required to be registered with the Securities and Exchange Commission under the Securities Act of 1933; (ii) issued or guaranteed in whole or in part as to principal and interest by the member bank's parent which is a bank holding company under the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841-50), regardless of the use of proceeds; and (iii)(A) issued in a denomination of less than $100,000 and with a stated maturity, notice period or redemption period of less than seven days or (B) issued in a denomination of less than $2,500 and with a stated maturity, notice period, or redemption period of seven to thirty-one days.

(2) The term "deposits" does not include those obligations of a bank holding company that are subject to interest rate limitations imposed pursuant to Public Law 89-597.

* * * * *

2. Section 217.3 is amended in paragraph (f) by removing "217.7(l)" and inserting "217.7(e)" in its place and by revising the second sentence of paragraph (a) to read as follows:

§ 217.3 Interest on time and savings deposits.

(a) * * * The effects of compounding of interest may be disregarded in ascertaining the rate of interest paid. * * *

3. Section 217.4 is amended in paragraph (f) by removing "217.7(l)(2)"

and inserting "217.7(e)(2)" in its place, and paragraph (d) by revising subparagraph (1)(iii) introductory text, by adding new subparagraphs (1)(iii) (D) and (E) and by adding new subparagraph (1)(iv), and by revising the last sentence of subparagraph (6) to read as follows:

§ 217.4 Payment of time deposits before maturity.

* * * * *

(d) * * *

(1) * * *

(iii) The following minimum early withdrawal penalty shall apply to time deposit contracts entered into, renewed, or extended between June 2, 1980, and September 30, 1983, and that have not been renewed or extended on or after October 1, 1983: * * *

(D) Notwithstanding subparagraphs (A) and (B), where a time deposit in an amount of $2,500 to less than $100,000, with an original maturity of 91 days, or any portion thereof, is paid before maturity, a depositor shall forfeit an amount equal to at least all interest earned on the amount withdrawn.

(E) Notwithstanding subparagraph (A), where a nonnegotiable time deposit subject to an initial deposit of $2,500 or more, with an original maturity or required notice period of seven to 31 days, or any portion thereof, is paid before maturity, a depositor shall forfeit an amount equal to at least the greater of

(*1*) All interest earned on the amount withdrawn from the most recent date of deposit, date of maturity, or date on which notice of withdrawal was given, or

(*2*) All interest that could have been earned on the amount withdrawn during a period equal to one-half the maturity period or required notice period.

(iv) The following minimum early withdrawal penalty shall apply to time deposit contracts entered into, renewed, or extended on or after October 1, 1983:

(A) Where a time deposit with an original maturity or required notice period of seven to 31 days, or any portion thereof, is paid before maturity, a depositor shall forfeit an amount at least equal to the greater of (*1*) all interest earned on the amount withdrawn from the most recent of the date of deposit, date of maturity, or date on which notice of withdrawal was given, or (*2*) all interest that could have been earned on the amount withdrawn during a period equal to one-half the maturity period or the required notice period.

(B) Where a time deposit with an original maturity or required notice period of 32 days to one year, or any portion thereof, is paid before maturity, a depositor shall forfeit an amount at least equal to one month's interest earned, or that could have been earned, on the amount withdrawn at the nominal (simple interest) rate being paid on the deposit, regardless of the length of time the funds withdrawn have remained on deposit.

(C) Where a time deposit with an original maturity or required notice period of more than one year, or any portion thereof, is paid before maturity, the depositor shall forfeit an amount at least equal to three months' interest earned, or that could have been earned, on the amount withdrawn at the nominal (simple) interest rate being paid on the deposit, regardless of the length of time the funds withdrawn have remained on deposit.

* * * * *

(6) * * * Except as provided in subparagraphs (1)(iii)(E) and (1)(iv)(A), when a time deposit is payable only after notice, for funds on deposit for at least the notice period, the penalty for early withdrawal shall be imposed for at least the notice period.

* * * * *

§ 217.5 [Amended]

4. Paragraph (c)(1) of § 217.5 is amended by removing "217.7(m)" and inserting "217.7(g)" in its place.

§ 217.6 [Amended]

5. Section 217.6 is amended by removing paragraph (i).

6. Section 217.7 is amended by revising paragraphs (a), (b), (c)(1) introductory text and (d); by removing paragraphs (e), (f), (g), (i), (j) and (k); by redesignating paragraph (m) as paragraph (g) and paragraph (h) as paragraph (f); redesignated paragraph (g) is amended in subparagraph (1) by removing "(m)(2)" in both places that it appears and by inserting "(g)(2)" in its place, and by redesignating paragraph (l) as paragraph (e) and by revising newly designated paragraphs (e)(1) and (e)(3) to read as follows:

§ 217.7 Supplement: Maximum Rates of Interest Payable by Member Banks on Time and Savings Deposits.

* * * * *

(a) *Time deposits of $100,000 or more, or with original maturities or required notice periods of 32 days or more, or IBF time deposits.* (1) There is no maximum rate of interest presently prescribed on any time deposit of $100,000 or more, or with an original maturity or required notice period of 32 days or more, or on IBF time deposits issued under section 217.1(l).

(2) Except for IBF time deposits, a member bank may permit additional deposits to be made to any time deposit with an original maturity or required notice period of 32 days or more at any time prior to its maturity or expiration of notice period without extending the maturity or required notice period of the entire balance in the account.

(b) *Time deposits with original maturities or required notice periods of seven to 31 days.* No member bank shall pay interest on any time deposit of less than $2,500 with an original maturity or required notice period of 31 days or less at a rate in excess of 5¼ percent.

(c) *Savings deposits.* (1) Except as provided in paragraph (g) no member bank shall pay interest at a rate in excess of 5¼ percent on any savings deposit.

* * * * *

(d) *Governmental unit time deposits.* Except as provided in paragraphs (a) and (e) and notwithstanding paragraph (b), 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 in excess of 8 percent.

(e) *Seven- to 31-day time deposits of $2,500 or more.* (1) Notwithstanding paragraph (d), a member bank may pay interest at any rate as agreed to by the depositor on any time deposit of $2,500 or more, with a maturity or required notice period of not less than seven days nor more than 31 days. However, a member bank shall not pay interest in excess of the ceiling rate for regular savings deposits or accounts on any day the balance in a time deposit issued under this paragraph is less than $2,500.

* * * * *

(3) Where all or any part of a time deposit issued under this paragraph is withdrawn within one business day after the maturity date of the deposit or the date of expiration of notice of withdrawal, no early withdrawal penalty is required to be applied on the amount withdrawn.

* * * * *

5. Section 217.147 is revised to read as follows:

§ 217.147 Premiums, finders fees, prepayment of interest and payment of interest in merchandise.

For regulatory provisions relating to premiums, finders fees, prepayment of

interest and payment of interest in merchandise refer to 12 CFR 1204.109, 1204.110 and 1204.111.

By order of the Board of Governors, October 3, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-27351 Filed 10-6-83; 8:45 am]

BILLING CODE 6210-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 389

Fees and Charges for Special Services; Waiver of Filing-Fee Requirements

AGENCY: Civil Aeronautics Board.

ACTION: Waiver of filing-fee requirements under 14 CFR Part 389.

SUMMARY: Following requests on behalf of certain foreign carriers, the Director, Bureau of International Aviation, acting under delegated authority, has waived the requirements of Part 389 of the Board's Organization Regulations to the extent necessary to relieve the carriers of Taiwan (by letter dated 8/26/83) and Jordan (by letter dated 9/27/83), from paying the filing fees set forth in § 389.25.

EFFECTIVE DATE: Each action was effective immediately on the date of the letter and the filing of a petition for review will not alter its effectiveness.

FOR FURTHER INFORMATION CONTACT: Allen Brown, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5134.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-27441 Filed 10-6-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM 80-10-000]

Order Granting Temporary Stay of Effective Date for 60 Days of Phase II of the Incremental Pricing Program of the Natural Gas Policy Act

Issued: October 5, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting temporary stay of effective date of Order No. 80.

SUMMARY: On May 6, 1980, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 80, 45 FR 31,622 (May 13, 1980)) to implement Phase II of the incremental pricing program of the Natural Gas Policy Act (NGPA). That program was, among other things, intended by Congress to shield residential and commercial natural gas users from the higher prices permitted by the NGPA. Phase II expanded those subject to the program's surcharge pricing mechanism to include other industrial users in addition to the large industrial facilities using gas as boiler fuel covered by Phase I. Several persons filed petitions for rulemaking and for stay of the October 15, 1983, effective date of the final rule. The Commission grants petitioners' request to stay the effective date of Order No. 80. This order stays the effective date for sixty days. Elsewhere in this issue, the Commission proposes to extend the stay for a period no longer than 120 days or until Commission completes its reconsideration of Order No. 80, whichever is earlier.

DATES: The order to stay the effective date of Order No. 80 until December 14, 1983, is effective October 5, 1983.

FOR FURTHER INFORMATION CONTACT: Barbara K. Christin, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing this order to stay for sixty days the effective date of the final regulations promulgated in Order No. 80.[1] Those regulations expand the scope of the incremental pricing program in accordance with section 202 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. IV 1980). Absent Commission action, Order No. 80 would become effective October 15, 1983. The Commission is also proposing to extend the stay for an additional 120 days or until the Commission completes reconsideration of the regulations in Order No. 80, whichever is earlier.

The Commission has received petitions for rulemaking and stay of the effective date of Order No. 80 from the American Gas Association and Indicated Industrial Consumers, and jointly from Interstate Natural Gas Association of America, Petrochemical Energy Group, and United Distribution Companies. Petitioners request the Commission to reopen the rulemaking proceedings in this docket and to stay the final rule pending the outcome of the reopened proceedings. For the reasons discussed below, the Commission grants petitioners' request for a temporary stay of the effective date of Order No. 80 for sixty days. In addition, the Commission requests comments on a proposal to extend the stay for an additional 120 days, or until the Commission completes its reconsideration of the final rule in light of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Consumer Energy Council of America* v. *Federal Energy Regulatory Commission*,[2] whichever is earlier.

II. Background

Under Title II of the NGPA, Congress established an incremental pricing program which, among other things, was intended to shield residential and commercial natural gas users from the higher natural gas prices permitted by Title I of the NGPA. Under this program, the "incremental costs" of natural gas were to be passed through from interstate pipelines to certain industrial users by means of a surcharge pricing mechanism.

The Commission issued regulations to implement the incremental pricing program in two phases. The first phase was implemented by regulations issued on September 28, 1979 (44 FR 57,726, October 5, 1979).[3] Under those regulations, only large industrial facilities that use natural gas as boiler fuel are subject to incremental pricing.

Section 202 of Title II required the Commission to promulgate a second phase (Phase II) rule by May 9, 1980, amending the scope of the incremental pricing program to include other industrial users. Section 202 also directed the Commission to submit the Phase II rule to Congress for review. The rule would not become effective if disapproved by either House within a thirty-day review period.

On May 6, 1980, the Commission issued the Phase II rule (Order No. 80) as required by the NGPA. That rule extended the incremental pricing program to all industrial users except those exempted specifically by the

[1] Order No. 80, issued May 6, 1980, Docket No. RM80-10, 45 FR 31,622 (May 13, 1980).

[2] 673 F.2d 425 (D.C. Cir. 1982); *aff'd mem. sub nom.* Process Gas Consumers Group v. Consumer Energy Council of America, 51 U.S.L.W. 3935 (U.S. July 6, 1983), *reh. denied* 52 U.S.L.W. 3187 (U.S. Sept. 9, 1983).

[3] The regulations issued on September 28th were contained in two dockets, Docket Nos. RM79-14 and RM79-21.

NGPA and applied to all industrial gas consumption exceeding 300 Mcf per day. It also set a uniform price ceiling for natural gas sold to industrial users at the price of high sulfur No. 6 residual fuel oil.

In the order, the Commission stated:

> The Commission believes that it was neither requested nor authorized to second-guess the social and economic judgments that the Congress made in enacting Title II. The role of the Commission under Section 202 is more limited. Instead, the Commission is instructed to bring its technical expertise to bear on the design of a workable Phase II rule that can best advance the purposes set by the Congress. It is up to the Congress to decide whether this Phase II submittal meets adequately the social and economic goals of the incremental pricing program or, indeed, whether those goals are still appropriate.[4]

Order No. 80 was submitted to Congress pursuant to section 202(c) of the NGPA, and was to become effective ninety days following the expiration of the thirty-day review period if neither House of Congress passed a resolution of disapproval. On May 20, 1980, the House of Representatives passed a resolution of disapproval of the Phase II rule by a vote of 369–34.

Subsequent to that vote, the Commission received one application for rehearing of the final rule. The applicant argued that the legislative veto provision of section 202 was unconstitutional and asked the Commission to make the Phase II rule effective at the end of the ninety days following the thirty-day Congressional review period.

On August 1, 1980, the Commission denied the application for rehearing and revoked Order No. 80.[5] In the August 1 order the Commission explained that in the event the legislative veto provision was held unconstitutional, the Phase II rule should not become effective because the Commission had relied upon Congress to examine the social and economic benefits of extending the incremental pricing program, and had not "independently evaluated whether the Phase II rule meets the social and economic goals of the Title II incremental pricing program."[6]

Subsequently, several persons sought judicial review of the constitutionality of the legislative veto provision and the Commission's revocation of the Phase II rule. The D.C. Circuit held the legislative veto provision of section 202(c) of the NGPA is severable from section 202 and unconstitutional. The court also held that the Commission's revocation of the Phase II rule was invalid because the Commission did not provide adequate notice and opportunity for comment, and ordered that the rule take effect thirty days from the date of the court's decision. The court stated, however, that the Commission "may consider whether to amend the substance of the rule or, in order to provide time for sufficient consideration, whether to postpone the effective date further."[7]

On July 6, 1983, the United States Supreme Court affirmed the decision of the D.C. Circuit, and, on September 9, 1983, denied rehearing of its decision. Accordingly, on September 15, 1983, the D.C. Circuit issued its mandate. As a result, absent Commission action, Order No. 80 will become effective October 15, 1983.

III. Further Proceedings and Temporary Stay of Effective Date

The petitions for rulemaking and stay request the Commission to reopen the record in the Phase II proceeding so the Commission may evaluate the need to amend or revoke the Phase II rule. Pending the outcome of such a proceeding, petitioners ask the Commission to stay the effectiveness of the Order No. 80 regulations.

The Commission agrees with petitioners that the Phase II rule should be reconsidered and intends to thoroughly reassess it in light of the relevant judicial opinions and a complete and updated record, as well as current market conditions. The Commission intends to issue a notice of proposed rulemaking within the next sixty days to reopen the rulemaking proceeding this docket and to request public comment on various alternatives that may be available to it, including revocation of the Phase II rule or amendments to the rule which would limit its applicability or better serve the purposes of Title II of the NGPA. In addition, comments will be requested on the extent of the Commission's authority under Title II, including its exemptive authority under section 206(d), and whether the Commission is now required to promulgate a Phase II rule.

The Commission believes that it would be in the public interest to stay the effective date of the Phase II rule for sixty days while it receives comments on whether to further stay the effective date until Order No. 80 is reconsidered by the Commission. While the court permitted a thirty-day delay in the effective date of Order No. 80, the Commission believes that this does not allow sufficient time either from a practical standpoint or under the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*, for adequate notice and opportunity for comment and reconsideration of the matter.[8] If the rule were to take effect on October 15, 1983, pipelines, distributors, and industrial users would be faced with an enormous administrative burden which may be unwarranted if the rule is ultimately modified or revoked. At the same time, allowing the rule to go into effect would not result in a counterbalancing benefit to the residential and commercial users that the incremental pricing program was designed to protect. For the most part, oil prices are below, or comparable to, natural gas prices so that the incremental surcharges that would be flowed back to consumers would be minimal, if any at all. On balance, the rule would not result in any beneficial effects at this time.

For these reasons, the Commission finds that the public interest requires a stay for sixty days of the effective date of Order No. 80 and that good cause exists to make this order effective immediately. Furthermore, the Commission proposes to extend the stay for an additional 120 days after December 13, 1983 or until it completes its reconsideration of the final regulations in Order No. 80, whichever is earlier. Comments are requested on this proposal.

Accordingly, the petitions for rulemaking and stay are granted to the extent they request a stay of the effective date of Order No. 80. Thus, the final regulations in Order No. 80 will become effective December 14, 1983, unless the Commission extends the stay as proposed.

IV. Comment Procedures

The Commission invites all interested persons to submit written data, views, or arguments concerning its proposal to extend the stay of the regulations in Order No. 80 for an additional 120 days or until it completes its reconsideration of those regulations. In addition, any interested person may request in writing that a public hearing be held for the oral presentation of data, views, and arguments on whether the stay should be extended. All comments and all requests for a public hearing should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington,

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[4] 45 FR at 31,622.

[5] Order Denying Rehearing and Revoking Amendments made by Order No. 80, issued August 1, 1980, Docket No. RM80–10, 45 FR 54,741 (Aug. 18, 1980).

[6] 45 FR at 54,742.

[7] 673 F.2d at 479.

[8] *See generally* Motor Vehicle Manufacturers Association of the United States v. State Farm Mutual Automobile Insurance Co., 51 U.S.L.W. 4953 (U.S. June 24, 1983).

D.C. 20426 on or before October 28, 1983, and should refer to Docket No. RM80-10-000. An original and fourteen copies should be filed. All written submissions will be placed in the public file which has been established in this docket and which is available for public inspection through the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426. The Commission will schedule a public hearing if it receives any requests for the oral presentation of comments.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 83-27536 Filed 10-6-83; 9:57 am]

BILLING CODE 6417-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing or FD&C Yellow No. 5 in Externally Applied Drugs and in Cosmetics and of Its Lakes in Food and Ingested Drugs; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Yellow No. 5 for use in coloring externally applied drugs and cosmetics and of the lakes of FD&C Yellow No. 5 for use in coloring food and ingested drugs. The new closing date will be December 5, 1983. This brief postponement will provide additional time for the agency to complete its review and consider the scientific and legal aspects of the results of the toxicological studies and other data on FD&C Yellow No. 5. Additionally, during this brief postponement, after completing its review of these data, the agency will prepare the appropriate **Federal Register** document(s).

DATES: Effective October 7, 1983, the new closing date for FD&C Yellow No. 5 will be December 5, 1983.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of October 7, 1983, for the provisional listing of the use FD&C Yellow No. 5 in externally applied drugs and in cosmetics and for the provisional listing of the use of the lakes of FD&C Yellow No. 5 in food and ingested drugs by a rule published in the **Federal Register** of March 27, 1981 (46 FR 18954). The October 7, 1983 closing date was established to provide time for completion of new chronic studies and of FDA's review and evaluation of the data concerning the provisionally listed uses of FD&C Yellow No. 5 and its lakes. FDA expected that this closing date would provide time for the agency to prepare and to publish a regulation in the **Federal Register** regarding FDA's final decision on the petition for the permanent listing of the aforementioned uses of this color additive and its lakes. The regulation set forth below will postpone the October 7, 1983 closing date for the provisionally listed uses until December 5, 1983.

FDA's review and evaluation of the data relevant to the provisionally listed uses of FD&C Yellow No. 5 have required more time than anticipated. The agency therefore concludes that the brief extension of the closing date to December 5, 1983, is necessary. This brief postponement will provide time for the agency to complete its review and prepare the appropriate **Federal Register** document(s). The agency concludes that no harm to the public health will result from this brief extension.

Because of the short time until the October 7, 1983 closing date, FDA concludes that notice and public procedure on this regulation are impracticable, and that good cause exists for issuing this postponement as a final rule. This regulation will permit the provisionally listed uses of this color additive and its lakes to continue uninterrupted until December 5, 1983. To prevent any interruption in the provisional listing of FD&C Yellow No. 5 and its lakes and in accordance with 5 U.S.C. 553(d) (1) and (3), this regulation is being made effective on October 7, 1983.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376 (b), (c), and (d))) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives,* by revising the closing dates for "FD&C Yellow No. 5" in paragraph (a) to read "December 5, 1983."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing,* by revising the closing date for "FD&C Yellow No. 5" in paragraph (d) to read "December 5, 1983."

Effective date.—This final rule is effective October 7, 1983.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376 (b), (c), and (d)); sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note))

Dated: September 29, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-27367 Filed 10-6-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Amoxicillin Trihydrate for Oral Suspension

Correction

In FR Doc. 83-25291 appearing on page 41579 in the issue of Friday, September 16, 1983, the "**EFFECTIVE DATE**" should have read "September 16, 1983".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-83-1005]

Community Development Block Grants

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Correction to a final rule.

SUMMARY: In a document published in the **Federal Register** on September 23, 1983 (48 FR 43538), HUD published a final rule which amends regulations governing the Community Development Block Grant (CDBG) program to reflect

changes made in the Housing and Community Development Act of 1974 by the Housing and Community Development amendments of 1980 (Pub. L. 96–399) and the Housing and Community Development amendments of 1981 (Pub. L. 97–35). The Department made an error in the amendatory language of item 8. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755–7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a final rule document published on September 23, 1983 (48 FR 43538) on page 43574, in the middle column, HUD erred in its amendatory language on item 8. This document corrects the error. Accordingly, the amendatory language for item number 8 is corrected to read as follows:

8. Subpart O of Part 570 is amended by adding § 570.901, to read as follows:

Dated: September 30, 1983.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 83-27350 Filed 10-6-83; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7917]

Income Tax; Taxable Years Beginning After December 31, 1953; Group-Term Life Insurance; Definition of a Policy

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains regulations relating to group-term life insurance provided to employees; specifically, it contains provisions relating to the definition of "policy" and restrictions on permanent benefits provided under a policy of group-term life insurance, but does not contain provisions relating to evidence of insurability. The Service has concluded that the definition of policy and the restrictions on permanent benefits added to the regulations in 1974 were broader than necessary. The regulations will help employers and others determine when insurance is group-term life insurance excludable from the income of insured employees.

EFFECTIVE DATE: The amendments provided in these regulations are effective for insurance provided in taxable years beginning after December 31, 1982.

FOR FURTHER INFORMATION CONTACT: Phoebe A. Mix of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention CC:LR:T, 202–566–3238, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1982, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 79 of the Internal Revenue Code of 1954 (47 FR 44343). A public hearing was held January 19, 1983. After consideration of all comments regarding the proposed amendments, this Treasury decision is adopted.

Definition of Policy

These regulations modify the definition of a policy added to the regulations by T.D. 7623 in 1979. These changes exempt certain mass-marketed insurance benefits from the requirements that generally apply when an insurer provides group-term life insurance and other benefits to a group of employees and permit an employer to treat two or more term insurance benefits as separate policies if the premiums are properly allocated among the benefits. One comment urged that the effective date of the amended definition of a policy be revised. The comment stated that the proposed definition was in response to ambiguities in the definition provided in the amendments to the section 79 regulations published May 1979. The comment stated that those amendments created unfair, arbitrary and harsh results in some situations and therefore suggested that the effective date for the new definition be moved back to May 1979 or that the definition of a policy in effect before the May 1979 amendments be made applicable for the May 1979–December 1982 period.

In response to the suggestion that the effective date of the proposed definition of a policy be revised to provide relief for policies covered by the May 1979 amendments, these regulations provide that the amended definition applies to all insurance to which the May 1979 amendments apply.

Permanent Benefits and Under 10 Rules

These regulations also reverse the rule provided in T.D. 7623 under which policies that include a permanent benefit do not qualify under section 79 unless the employee may decline or drop the permanent benefit without affecting the employee's term coverage. Finally, the regulations limit the extent to which the employees declining insurance are considered to receive such insurance for purposes of the under 10 rules.

Evidence of Insurability

Proposed § 1.79–1(g), relating to evidence of insurability is not being adopted at this time. This paragraph will remain outstanding as a proposed regulation because the Treasury Department is still evaluating the issue of evidence of insurability. If paragraph (g) is adopted as a Treasury decision the effective date for that paragraph will be no earlier than thirty days after the date the Treasury decision is published in the **Federal Register.**

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service has concluded that these regulations are interpretative and that the notice and public procedure requirement of 5 U.S.C. 553 do not apply. Accordingly, these regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of this regulation is Phoebe A. Mix 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 on matters of both substance and style.

List of Subjects in 26 CFR 1.61–1 through 1.281–1

Income taxes, Taxable income, Deductions, Exemptions.

Amendments to the Income Tax Regulations

Accordingly, the following amendments are made to 26 CFR Part 1:

PART 1—[AMENDED]

Paragraph 1. Section 1.79–0 is amended by adding two sentences at the end of the definition of policy. The introductory text of the section is set not

for the convenience of the reader and the definition of policy is revised to read as follows:

§ 1.79.0 Group-term life insurance—definitions of certain terms.

The following definitions apply for purposes of section 79, this section, and §§ 1.79–1, 1.79–2, and 1.79–3.

* * * * *

Policy. The term "policy" includes two or more obligations of an insurer (or its affiliates) that are sold in conjunction. Obligations that are offered or available to members of a group of employees are sold in conjunction if they are offered or available because of the employment relationship. The actuarial sufficiency of the premium charged for each obligation is not taken into account in determining whether the obligations are sold in conjunction. In addition, obligations may be sold in conjunction even if the obligations are contained in separate documents, each document is filed with and approved by the applicable state insurance commission, or each obligation is independent of any other obligation. Thus, a group of individual contracts under which life insurance is provided to a group of employees may be a policy. Similarly, two benefits provided to a group of employees, one term life insurance and the other a permanent benefit, may be a policy, even if one of the benefits is provided only to employees who decline the other benefit. However, an employer may elect to treat two or more obligations each of which provides no permanent benefits as separate policies if the premiums are properly allocated among such policies. An employer also may elect to treat an obligation which provides permanent benefits as a separate policy if—

(a) The insurer sells the obligation directly to the employee who pays the full cost thereof;

(b) The participation of the employer with respect to sales of the obligation to employees is limited to selection of the insurer and the type of coverage and to sales assistance activities such as providing employee lists to the insurer, permitting the insurer to use the employer's premises for solicitation, and collecting premiums through payroll deduction;

(c) The insurer sells the obligation on the same terms and in substantial amounts to individuals who do not purchase (and whose employers do not purchase) any other obligation from the insurer; and

(d) No employer-provided benefit is conditioned on purchase of the obligation.

Par. 2. Section 1.79–1 is amended by revising paragraphs (b) and (c)(5), removing and reserving paragraph (g), and adding a new paragraph (h) to read as follows:

§ 1.79–1 Group-term life insurance—general rules.

* * * * *

(b) *May group-term life insurance be combined with other benefits?* No part of the life insurance provided under a policy that provides a permanent benefit is group-term life insurance unless—

(1) The policy or the employer designates in writing the part of the death benefit provided to each employee that is group-term life insurance; and

(2) The part of the death benefit that is provided to an employee and designated as the group-term life insurance benefit for any policy year is not less than the difference between the total death benefit provided under the policy and the employee's deemed death benefit (DDB) at the end of the policy year determined under paragraph (d)(3) of this section.

(c) *May a group include fewer than 10 employees?* * * *

(5) For purposes of paragraph (c) (1) and (2) of this section, insurance is considered to be provided to an employee who elects not to receive insurance unless, in order to receive the insurance, the employee is required to contribute to the cost of benefits other than term life insurance. Thus, if an employee could receive term life insurance by contributing to its cost, the employee is taken into account in determining whether the insurance is provided to 10 or more employees even if such employee elects not to receive the insurance. However, an employee who must contribute to the cost of permanent benefits to obtain term life insurance is not taken into account in determining whether the term life insurance is provided to 10 or more employees unless the term life insurance is actually provided to such employee.

* * * * *

(g) [Reserved.]

(h) *Effective date.* Section 1.79–0 applies to insurance provided in employee taxable years beginning on or after January 1, 1977 (except as provided in 26 CFR 1.79–1(g) (revised as of April 1, 1983) with respect to insurance provided in employee taxable years beginning in 1977). Sections 1.79–1 through 1.79–3 apply to insurance provided in employee taxable years beginning after December 31, 1982. See 26 CFR 1.79–1 through 1.79–3 (revised as of April 1, 1983) for rules applicable to insurance provided in employee taxable years beginning before January 1, 1983.

Dated: September 21, 1983.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

John E. Chapoton,

Assistant Secretary for Tax Policy.

[FR Doc. 83-27325 Filed 10-6-83; 8:45 am]

BILLING CODE 4830-01-M

POSTAL SERVICE

39 CFR Part 111

Interim Regulations Implementing ZIP+4 Discounts and Invitation for Comments

AGENCY: Postal Service.

ACTION: Interim rule with request for comments.

SUMMARY: Effective October 9, 1983, discounted rates will be available for bulk mailings of First-Class Mail addressed with proper ZIP+4 codes and prepared and tendered in accordance with other eligibility requirements. Interim implementing regulations have been developed and are set forth below for comment and suggested revision prior to adoption in final form.

DATES: The interim regulations will take effect on October 9, 1983. Comments must be received on or before November 7, 1983.

ADDRESS: Written comments should be directed to the Director, Office of Mail Classification, Rates and Classification Department, U.S. Postal Service, Washington, D.C. 20260–5360. Copies of all written comments will be available for public inspection and copying between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ernest Collins, Office of Mail Classification, (202) 245–4749.

SUPPLEMENTARY INFORMATION: On October 3, 1983, the Governors of the Postal Service approved a recommended decision of the Postal Rate Commission, and ordered into effect changes in the Domestic Mail Classification Schedule and in Rate Schedule A–1, which provide for discounts on regular First-Class Mail and First-Class post cards bearing ZIP+4 codes, and meeting a number of other eligibility requirements. On the same date the Board of Governors determined that the approved changes will take effect at 12:01 a.m. on October 9, 1983. A notice of these changes is published separately in this issue of the **Federal Register.**

Generally, a discount of 0.5 cent is to be allowed on ZIP+4 First-Class Mail presorted to 3- and 5-digit ZIP Code destinations, and a discount of 0.9 cent is to be allowed on nonpresorted ZIP+4 First-Class Mail. The eligibility requirements are as follows:

(1) Nonpresorted ZIP+4 mail must be tendered in mailings of 250 pieces, each of which must meet all eligibility requirements as to ZIP+4 code, markings, machinability, and OCR-readability. Presorted ZIP+4 mail must be tendered in mailings of 500 pieces, each of which meets all eligibility requirements as to ZIP+4 code, markings, machinability, and OCR-readability. A ZIP+4 discount is not available for carrier route First-Class Mail, but carrier route mail meeting all ZIP+4 eligibility requirements may be counted toward the minimum quantities.

(2) The address on each piece must include a correct ZIP+4 code.

(3) Each piece must be marked "ZIP+4" or "ZIP+4 Presort," as appropriate.

(4) Postage must be paid by meter or by permit imprint.

(5) Mailings must be presented in trays at locations and times designated by the postmaster. A mailing statement must be submitted with each mailing.

Note.—ZIP+4 discounts are not available for business reply and registered mail.

ZIP+4 rates are available on a strictly voluntary basis to mailers who convert their mailing lists to ZIP+4 codes and meet other eligibility requirements. The following are interim regulations for inclusion in the Domestic Mail Manual. After completion of a period for public comment and suggested revisions, ending on November 7, 1983, final regulations will be published.

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comment on the following interim addition to the Domestic Mail Manual, which is incorporated by reference in the **Federal Register.** See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

An appropriate amendment to 39 CFR 111.3 to reflect the following changes will be published when a final rule is adopted.

(39 U.S.C. 401(a), 403)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

PART 111—[AMENDED]

Chapter 3—First Class Mail

310 Rates and Fees
(See Exhibit 310)

Subparts E and F are relettered F and G respectively, and a new Subpart E is inserted, as follows:

Exhibit 310

E. ZIP+4 First-Class Mail

To mail at the ZIP+4 presort rate, the presort annual fee of $40 must be paid. (Payment of one $40 fee allows the mailer to mail qualifying matter at all First-Class presort rates including Carrier Route presort.

Full rate First-Class letters and post cards and Presorted First-Class letters and post cards may qualify for the ZIP+4 postage rate.

Rates	Postage rate unit	Nonpresorted	Presorted	Carrier route
ZIP+4 Rate cards.	Piece	12.1	11.5	*11
ZIP+4 Rate Letters.	First ounce	19.1	16.5	*16
	Each additional ounce.	17	17	*16

NOTE.—Carrier route First-Class Mail meeting the requirements for ZIP+4 mail counts toward the minimum volume requirement for a ZIP+4 mailing, although there is no distinct ZIP+4 carrier route mail rate.

All pieces in ZIP+4 mailings must bear a ZIP+4 Code.

320 Classification

* * * * *

Parts 324–326

Parts 324 (First-Class Zone Rated (Priority Mail), and 325 (E–COM Service) are renumbered 325 and 326 respectively, and a new Part 324 is inserted as follows:

324—ZIP+4 First-Class Mail

ZIP+4 First-Class Mail consists of First-Class letters and post cards which are part of a mailing of at least 500 pieces of a ZIP+4 presort mailing or at least 250 pieces of a ZIP+4 nonpresort mailing, and the pieces meet all of the following criteria:

A. Each piece in a mailing must bear the correct ZIP+4 code.

B. Postage must be paid by permit imprint or meter stamp.

C. Each First-Class letter piece must meet the following machinability criteria:

(1) Its length must be at least 5 inches and not more than 11½ inches.

(2) Its height must be at least 3½ inches and not more than 6⅛ inches.

(3) Its thickness must be at least .007 of an inch and not more than ¼ of an inch.

(4) Its aspect ratio must fall between 1 to 1.3 and 1 to 2.5.

D. Each First-Class post card must meet the following criteria:

(1) Its length must be at least 5 inches and not more than 6 inches.

(2) Its height must be at least 3½ inches and not more than 4¼ inches.

(3) Its thickness must be at least .007 of an inch and not more than .0095 of an inch.

E. Bar Code Clear Zone.

No printing or markings whatsoever can be placed within an imaginary rectangle on the front of the mail piece formed by the following boundaries:

(1) ⅝ of an inch from the botton edge;

(2) 4½ inches from the right edge;

(3) The bottom edge;

(4) The right edge.

F. OCR Readability.

(1) Mandatory Requirements:

(a) The entire city/state/ZIP+4 code line of the address must be visible and must be located within an imaginary rectangle, which is the OCR read area, on the front of the mail piece formed by the following boundaries:

(i) 1 inch from the left edge.

(ii) 1 inch from the right edge.

(iii) ⅝ inch from the bottom edge (bottom line of rectangle).

(iv) 2¼ inches from the bottom edge (top line of rectangle).

(b) No extraneous printing or markings (other than the address) shall be placed within the OCR read area below the delivery address.

(c) The address must be machine printed with uniform character size and line spacing.

(d) A reasonable degree of color contrast must be maintained between the address and the background of the mail piece. Black ink on a white background is strongly preferred, but other color combinations may be used. Brilliant colors and reverse printing are not permitted.

Note.—The Postal Service may treat as unacceptable any mail piece with color combinations which do not provide a print reflectance difference of at least 40 percent measured at a wavelength of 650 manometers.

(2) Nonmandatory Guidelines.

In order to insure that highest degree of address readability, mailers are encouraged to conform with as many of the following guidelines as possible:

(a) Maintain a uniform left margin for the name and address.

(b) Use the standard two-letter state abbreviation.

(c) Do not use italic, artistic, cyrillic, and script-like fonts. Characters or numbers should not touch or overlap within a word or the ZIP+4 code.

(d) Use upper case characters.

(e) Use line spacing of 6 lines per inch.

(f) Use a character pitch in the range of 7 to 12 characters per inch. Note: total character space may be conserved by eliminating punctuation in the address.

(g) Use a uniform character height in the range of .08 or (1.28/16 or 2.56/32 or 5.12/64) of an inch to .20 (or 3.2/16 or 6.4/32 or 12.8/64) of an inch.

(h) Use a character height to width ratio of 1.1:1 or 1.7:1.

(i) Use 1 to 2 character spaces between words, except that the space between the last character of the state name or abbrevation and the first digit of the ZIP+4 code should be 2 to 5 character spaces.

(j) Use a space between address lines no less than .025 of an inch (1 millimeter). The space is the vertical distance from the bottom most point of either an upper or lower case character to the highest point reached by the tallest character in the line below.

(k) Maintain a character and line skew of the address relative to the bottom edge of the mail piece of no more than plus or minus five degrees.

Part 361—Addressing

A new section 361.4 is added, as follows:

361.4 ZIP+4 First-Class Mail

The address of each piece must include the ZIP+4 code.

Part 362—Marking Requirements

A new 362.4 is added, as follows.

362.4—ZIP+4 First-Class Mail

All pieces which are mailed at the ZIP+4 rate must be marked ZIP+4. If the pieces mailed at the ZIP+4 rates are presorted, they must be endorsed ZIP+4 Presort.

a. When a permit imprint is used, the identification "ZIP+4" or "ZIP+4 Presort," as applicable, must be part of the permit imprint or printed or rubber stamped by the mailer above the address and immediately below or to the left of the permit imprint.

b. When a meter stamp is used, the identification "ZIP+4" or "ZIP+4 Presort," as applicable, must be printed or rubber stamped by the mailer above the address and immediately below or to the left of the meter stamp.

c. The appropriate marking may be printed by a postage meter, special slug, ad plate, or other suitable means which will ensure a legible endorsement.

Part 368—ZIP+4 First-Class Mail

A new Part 368 is added, as follows:

368—ZIP+4 First-Class Mail

368.1—General Requirements

.11—Machinability

Each piece must meet the criteria in 324(c) or 324(d), as appropriate.

.12—OCR Readability

Each piece must meet the OCR readability requirements in 324.

368.2—Nonpresorted ZIP+4 Mail

.21—Sortation and Packaging Requirements (None).

.22—Traying Requirements

Nonpresorted ZIP+4 Mail must be presented for mailing in trays bearing labels endorsed "ZIP+4."

368.3—Presorted ZIP+4 First-Class Mail

.31—Packaging Requirements

.311—When to Make Packages

When there are 10 or more pieces to the same carrier route and the pieces qualify for the carrier route First-Class rate, they must be secured as a package and labeled in accordance with the requirements in 367.3.

When there are 10 or more pieces to the same 5-digit ZIP Code destination and/or 50 or more pieces to the same 3-digit ZIP Code prefix destination, they must be secured as a package by the mailer. Rubber bands are the only acceptable means of securing packages of trayed mail.

.312—Rubber Bands

Rubber bands will be provided by the Postal Service and must be used by mailers to secure packages of ZIP+4 Presort Mail under the following conditions:

a. Packages must be secured with rubber bands.

b. Packages should not exceed approximately 4 inches in thickness.

c. Packages up to one inch in thickness must be secured with one rubber band around the girth. Packages between one and four inches in thickness must be secured with two rubber bands, the first around the length and the second around the girth.

.313—Exceptions to Packaging

The packaging requirements for ZIP+4 Presort First-Class Mail left over after filling trays described in 368.3 through 368.4 may be waived when the use of separating tabs is approved by the local postmaster.

.314—Labeling of Packages

Package labels must be used to identify the makeup of ZIP+4 Presort packages of mail:

a. Place coded pressure sensitive labels in the lower left corner within one inch of the left edge on the address side of top piece in the package. NOTE: Pressure sensitive labels will be provided by the Postal Service.

b. Do not date package labels.

368.32—Traying

Packages must be made up into trays in accordance with 368.4. Two letter state abbreviations must be used on labels.

368.4—Sortation Requirements for Qualifying ZIP+4 Pieces

368.41—Carrier Route Packages and Trays

Qualifying carrier route packages and trays must be prepared and labeled in accordance with the requirements in 367.4.

.42—5-Digit ZIP Code Delivery Unit Packages and Trays

.421—Packages

When there are 10 or more pieces, but less than a full tray, addressed to the same 5-digit ZIP Code delivery unit, they must be prepared, by the mailer, in packages of 10 or more pieces and the packages should not be more than 4 inches in thickness. The pieces in the packages must be faced in the same direction and secured with one or two rubber bands around each package as provided by 368.312. Red label D must be affixed to the left corner within one inch of the left edge on the address side of the top piece in each package.

.422—Trays

When there is enough mail for the same 5-digit ZIP Code delivery unit to fill a tray (approximately 500 pieces), a direct 5-digit tray must be prepared. Mail left over after filling direct trays must be bundled and placed in the appropriate unique 3-digit city or SCF mail tray with the same first three digits. A tray label must be firmly affixed to the end of the tray. Direct 5-digit trays or containers must be labeled in the following manner:

Line 1: City, State, 5-Digit ZIP Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location

Sample:

Philadelphia PA 19118

FCM ZIP+4 Presorted

FR JC Company Boston MA

.43—Unique 3-Digit City Packages and Trays

.431—Packages

When there are 50 or more pieces, but less than a full tray, remaining for a city with a unique 3-digit ZIP Code prefix after the 5-digit ZIP Code delivery unit packages required by 368.422 have been

prepared, they must be made up as unique 3-digit city packages and must be secured with one or two rubber bands as provided by 368.312. Cities with unique 3-digit ZIP Code prefixes are listed in Exhibit 122.633. Yellow label C must be affixed to the left of the address side of the top piece of each package within one inch of the left edge of the address side of the top piece.

.432—Trays

Unique 3-digit city mail plus any packages for 5-digit ZIP Code delivery units within those cities not trayed, as provided for by 368.422, must be prepared in unique 3-digit city trays. A unique 3-digit city tray label must be firmly affixed to the end of each tray. Unique 3-digit trays must be labeled in the following manner:

Line 1: City, State, 3-Digit Destination
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:

Philadelphia PA 191

FCM ZIP+4 Presorted

FR Q Mailers Balto MD

Note.— Mail left over after filling trays must be bundled in the packages and placed in an SCF tray.

.44—3-Digit Packages and SCF Trays

.441—Packages

When there are 50 or more pieces, but less than a full tray, remaining for the same 3-digit ZIP Code prefix after the packages required by 367.422 and 367.431 have been prepared, they must be bundled as packages to that 3-digit ZIP Code prefix. The pieces in the packages must be faced in the same direction and secured with one or two rubber bands as provided by 368.312. Green label 3 must be affixed to the left of the address on the top piece in each package within one inch of the left edge of the address side of the top piece.

.442—Trays

3-digit packages plus any 5-digit and unique 3-digit city packages not trayed, as provided for by 367.422 and 367.432 and which are destined for the same SCF must be prepared in SCF trays. An SCF tray label must be firmly affixed to the end of each tray. SCF trays must be labeled in the following manner:

Line 1: SCF, State Lowest 3-Digit Served by the SCF
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:
SCF Philadelphia PA 190

FCM ZIP+4 Presorted

FR Q Mailers Balto MD

ZIP+4 Presorted mail left over after filling SCF trays must be bundled. It is recommended, but not required, that these be placed in area distribution center (ADC) trays. If ADC trays are not prepared, bundles must be placed in mixed ADC trays.

.45—Area Distribution Center Trays

It is recommended, but not required, that packages remaining after traying, in accordance with 367.422, 367.432 and 367.442 be sorted to ADC's and placed in ADC trays (See Exhibit 367.24). A tray label in the format shown below must be firmly affixed to the end of the tray.

Line 1: Area Distribution Center, Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:

Dis St. Paul MN 550

FCM ZIP+4 Presorted

FR Q Mailers Balto MD

.46—Mixed ADC Trays

Packages remaining after traying in accordance with 367.422, 367.432, 367.442 and 367.45 must be prepared in mixed ADC trays. A mixed ADC tray label in the following format must be firmly affixed to the end of the tray:

Line 1: Area Distribution Center, Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:

DIS St. Paul MN 550

ZIP+4 Presorted Mixed ADC

FR Q Mailers St. Paul MN

.47—Nonqualifying Pieces

All nonqualifying pieces in a ZIP+4 Presort mailing are residual and are subject to full First-Class ZIP+4 rates. See Exhibit 310. Nonqualifying pieces must be trayed, sorted and prepared according to 367.5.

.48—Separation of Rate Categories

When a mailing consists of more than one rate category (i.e., ZIP+4 presort, non-presort ZIP+4, or carrier route First-Class), trays for each rate category must be physically separated by rate category at the time of mailing.

Part 372—Matter Mailed at ZIP+4, Presort First-Class and First-Class Carrier Route Rates

The first line of 372.1 is changed to read "Matter mailed at the presort or ZIP+4 rates must be deposited at."

Part 382—ZIP+4, Presort and Carrier Route Rates

Title is changed to read "ZIP+4, Presort and Carrier Route Rates."

The first two lines of section 382.4 (Mailing Statement) are changed to read, "Mailers who qualify for the First-Class presort rate or ZIP+4 rates (see 323 and 324) must complete and submit one of the following mail-."

[FR Doc. 83-27437 Filed 10-6-83; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 717

[OPTS-83001C; BH-FRL 2446-1]

Records and Reports of Allegations of Significant Adverse Reactions to Health and the Environment; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule related notice; Notice of open meeting.

SUMMARY: EPA will hold an open meeting to explain in detail the rule on recordkeeping and reporting of allegations of adverse reactions required under section 8(c) of the Toxic Substances Control Act which was published in the **Federal Register** of August 22, 1983 (48 FR 38178).

DATES: The meeting will take place on Thursday, November 10, 1983, with registration at 8:00 a.m., the first session at 9:00 a.m., and adjournment by 2:00 p.m. Registration is required before October 20, 1983.

ADDRESS: This meeting will be held at the Twin Bridges Marriott Hotel, 333 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460; toll free: (800-424-9065); in Washington, D.C.: (554-1404); outside the USA: (Operator-202-554-1404).

To Register: Telephone the TSCA Assistance toll free number (800-424-9065); in Washington, D.C.: (544-1404); outside the USA: (Operator-202-554-1404).

A block of rooms has been reserved at the Twin Bridges Marriott Hotel for the night of November 9, 1983. To reserve a room, telephone (202-628-4200) before October 20, 1983. Mention the EPA 8(c) seminar.

SUPPLEMENTARY INFORMATION: Final rules, published in the **Federal Register** of August 22, 1983 (48 FR 38178) under the Toxic Substances Control Act, require manufacturers and certain processors of chemical substances and mixtures to keep records of significant adverse reactions to health or the environment alleged to have been caused by a substance or mixture. EPA may also inspect and require reporting of such records. This meeting provides a forum for industry, public interest groups, union representatives, trade associations, and other interested parties to ask questions and discuss the rule requirements. Three industry representatives will tell how their companies plan to keep 8(c) records.

Dated: September 29, 1983.

Marcia Williams,

Acting Director, Office of Toxic Substances.

[FR Doc. 83-27382 Filed 10-6-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF ENERGY

Office of the Secretary

41 CFR Parts 9-4 and 9-51

Amendments to Procurement Regulations; Correction

Correction

In FR Doc. 83-26513 beginning on page 44785 of the issue of Friday, September 30, 1983, make the following corrections:

1. On page 44786, the first column, in § 9-4.909, the first sentence of paragraph "1." should have read as follows:

1. On page 16451, in the third column, two lines from the bottom of the first paragraph, the words ", 9-4.909 (f) and (g) are removed." are added after the word "revised".

2. In the same column, the amendment to § 9-51.101 should have read as follows:

§ 9-51.101 [Corrected]

2. On page 16456, third column, in section 9-51.101, the drafter erroneously removed paragraphs (a) (1) and (2). Paragraphs (a) (2) and (3) should have been removed. The text of paragraph (a) (1) is restored. The corrected text of *Change 7.9* should read as set forth below:

Change 7.9

Section 9-51.101(a) (2) and (3) are removed as they involve organizations, Resource Applications and Energy Technology, which no longer exist. Therefore, Section 9-51.101 is amended by removing and reserving paragraphs (a) (2) and (3) as follows:

§ 9-51.101 General instructions regarding submissions to Headquarters

(a) * * *

(1) The offices at Schenectady and Pittsburgh will communicate through the Director, Division of Naval Reactors.

(2)-(3) [Reserved]

* * * * *

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Administrator's Review of Provider Reimbursement Review Board Decisions

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

ACTION: Final rule.

SUMMARY: These regulations set forth several changes in the procedures relating to the Administrator's review of Provider Reimbursement Review Board (the Board) decisions. These regulations: (1) Specify procedures and criteria for the Administrator's review of Board decisions: (2) authorize the Administrator to remand cases to the Board: (3) specify that the Administrator may review a Board's decision concerning jurisdiction to hear a case; and (4) clarify the time period available to a provider seeking judicial review if the Administrator declines to review a Board decision. The purpose of this final rule is to inform providers of criteria used by the Administrator in reviewing decisions and to clarify procedures and policies that have been identified through experience as subject to differing interpretations.

EFFECTIVE DATE: December 6, 1983.

FOR FURTHER INFORMATION CONTACT: Irwin Cohen, the Attorney Advisor, Health Care Financing Administration, (301) 594-5132.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, the amount paid to a provider of services is the reasonable cost of items and services furnished to beneficiaries. To be reimbursed for covered services, a provider must file a cost report with its fiscal intermediary who determines the amount of reimbursement. If a provider is dissatisfied with the amount of reimbursement (or if the intermediary does not make its determination within 12 months after receiving a cost report), the provider has the right to request a hearing before one or more hearing officers designated by the intermediary (42 CFR 405.1811), or before the Provider Reimbursement Review Board (the Board) if the amount in controversy is $10,000 or more (42 CFR 405.1835).

The Board was established by Section 1878 of the Social Security Act (the Act), 42 U.S.C. 1395oo. Regulations implementing that provision and prescribing procedures for determinations and decisions, and related matters, are published at 42 CFR 405.1801-405.1889.

Section 1878(f) of the Act authorizes the Secretary to reverse, affirm, or modify a decision of the Board. This review authority has been delegated to the Administrator of HCFA (42 FR 13262, March 9, 1977, and 42 FR 57351, November 2, 1977). The Administrator in turn re-delegated this authority to the Deputy Administrator. "Interim Procedures" governing the Administrator's review of Board decisions were published on September 6, 1977 (42 FR 44599), but have not been made a part of the regulations. If a provider is dissatisfied with the Administrator's decision (or the Board's decision if it is not reviewed by the Administrator), the provider may request review of the final agency decision by a United States district court. A determination or decision made at any level in this process is "final" unless it is appealed within specified time limits. (See 42 CFR 405.1811(a), 405.1841, 405.1877.)

II. Current Experience

Each Board decision is examined by HCFA staff in order to recommend to the Administrator whether he or she should exercise the authority to reverse, affirm, or modify the decision. This examination is presently conducted for the Administrator by HCFA's Office of the Attorney Advisor.

Since January 1976, the HCFA Administrator has declined to review the Board's decision in about 54 percent of the issues decided by the Board. The Administrator has affirmed about 25 percent and has reversed or modified about 21 percent. Recently, providers have sought judicial review in a growing number of cases in which the Board or the Administrator ruled against the provider. As of January 25, 1983, there were 247 cases pending in the Federal district courts.

Based on our experience gained over the last seven years and concerns expressed by the provider community

about the Administrator's review process, we have examined a number of areas where improvements or clarifications in the current procedures appear to be needed. An additional source of information was the consideration of comments obtained as a result of the Notice of Proposed Rulemaking published in the **Federal Register** on February 14, 1980 (45 FR 9953). This proposed rule invited public comment on several proposals involving the Board and also included proposed changes concerning the Administrator's review of Board decisions. (Final rules concerning proposed changes in Board procedures are still under consideration and will be published in other documents.)

III. Purpose of the Regulation

Our overall objective in making the changes set forth in this final rule is to improve the effectiveness of the Administrator's review of Board decisions, while safeguarding the rights and interests of providers. We have attempted to develop a process which is open, even-handed, and responsive to the needs of all parties. We have sought to avoid unnecessary delays in the process and, wherever possible, to place disputed issues in the forum where they can be resolved most effectively and expeditiously.

We believe, however, that a proper assessment of these procedures must rest on an understanding that while the Board was created by Congress to provide an unbiased forum for fact-finding and issue resolution with respect to individual controversies, it is designed to do this within the context of the law and regulations. It is not designed to substitute or replicate independent judicial review, which is specifically authorized upon completion of the administrative appeals process.

We are issuing these changes as a final rule because all the significant changes were proposed in the Notice of Proposed Rulemaking (NPRM) referred to in section II above. The only modifications to the NPRM either were based on public comments or more fully describe procedures already established.

Procedures for Administrator's Review

Section 1878(f)(1) of the Act provides, in part, that a decision of the Board shall be final unless the Secretary, on his or her own motion, and within 60 days after the provider of services is notified of the Board's decision, reverses, affirms, or modifies the Board's decision.

This provision is implemented in our current regulations in § 405.1875, but detail is lacking. HCFA published interim procedures for the Administrator's review (42 FR 44599, September 6, 1977) which supplied some of the detail needed by parties to Board hearings. The February 1980 **Federal Register** notice proposed placing in regulations many of the interim procedures and explained our proposed changes. This rule supersedes the interim procedures and finalizes several proposed changes.

Generally, these amendments will: (1) Make it clear that any party to a Board hearing or HCFA may request the Administrator to review a decision of the Board; (2) provide that the Administrator could decide to review a Board decision without having been asked to do so by any of the parties or HCFA; (3) provide the criteria the Administrator will apply in deciding whether to review a Board decision; (4) provide that the Administrator will promptly notify the parties of a decision to review or not to review a Board decision; (5) provide for written submissions by the parties upon receipt of the Administrator's notice to review a Board decision; (6) prohibit *ex parte* communications with the Administrator by a party or by a HCFA component other than the Office of the Attorney Advisor about a Board decision under review; (7) provide that a party need not send a copy of material prepared for the Administrator to HCFA, unless HCFA has previously submitted written material to the Administrator, with a copy sent to each party; and (8) clarify that submittal of a request for *review* will not automatically cause the Administrator to review a case.

As stated in the proposed rule, our intent is to focus the Administrator's review on a smaller precentage of the Board's decisions by creating a uniform review threshold and by requiring a party desiring review to make a showing that such a review is warranted. In the notice of proposed rulemaking, we suggested superseding those interim procedures that accord HCFA the opportunity to submit exceptions to the Board's decision or proposed findings of fact or conclusions of law, and supporting reasons for the exceptions or proposed findings and conclusions. This proposal, however, was a conforming change which was made consistent with our proposal to substitute the Bureau of Program Policy, HCFA for the intermediary as the party in Board hearings. Because we are not now finalizing that proposal to make HCFA a party in Board hearings, the final rule in § 405.1875 continues HCFA's right to request the Administrator to affirm, modify, reverse or remand a Board decision and to make additional, written submissions. The Director, Bureau of Eligibility, Reimbursement and Coverage (BERC), formerly the Bureau of Program Policy, has the authority to make such requests on behalf of HCFA in actions involving the Administrator's review of Board decisions. Copies of the written submissions that must be sent to "HCFA" should be mailed to BERC, 100 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. (Copies must be sent to HCFA if HCFA has requested review or commented about a decision under review by the Administrator.)

The final rule provides that a request to remand may include new and substantial evidence concerning issues presented to the Board or new issues that have arisen since the case was presented to the Board.

Additionally, we are making a conforming change in § 405.1871, to provide that the Board will also send HCFA a copy of its final decision at the same time copies are sent to the Administrator and to the parties.

Contrary to our proposal, we do not have the authority under the statute to allow a provider 60 days to seek judicial review after notification that the Administrator will not review a Board decision. The statute requires, in this case, that any request for court review be filed within 60 days of the provider's receipt of the Board decision.

IV. Analysis and Response to Comments on the NPRM

Fifty-one commentors expressed general dissatisfaction with the main features of the proposed rule, which included details of the operation of the Board, as well as the Administrator's review of Board decisions. The tenor of many comments was that many of the changes would limit further the independent authority and integrity of the Board by extending and strengthening HCFA's control over the administrative appeals process. In the discussion that follows, we attempt to address, point-by-point, the specific comments concerning the Administrator's review of Board decisions in order to provide the clearest possible picture of how we intend these changes to work.

a. Definition of Administrator

In commenting on the proposed procedures for Administrator's review, six commentors stated their objections to the definition of "Administrator" in the proposed § 405.1801(a). The commentors pointed out that the definition appeared to permit unlimited

redelegation of the Administrator's review authority. It was not our intent to permit unlimited delegation. Consequently, we are revising § 405.1801(a) to define "Administrator" as meaning the "Administrator or Deputy Administrator of HCFA". (See Section F.60.b of the Statement of Organization, Functions, and Delegations of Authority, Federal Register of November 2, 1977, 42 FR 57351.)

b. Elimination of the Administrator's Review

Five commentors suggested the elimination of the Administrator's review process to permit providers to seek immediate judicial review of the Board decision. We do not agree with the comment. Section 1878 of the Social Security Act (42 U.S.C. 1395oo) provides that the Secretary may review Board decisions on his or her own motion. Congress clearly did not intend for the Department to refrain from reviewing Board decisions or to do so only upon requests of providers.

Section 1878(f)(1) of the Act gives providers the authority to obtain judicial review of any final Board decision. This, however, will not prevent review by the Administrator. As a practical matter, we believe the continued exercise of review authority is both necessary and appropriate in applying the Medicare principles of reimbursement to provider claims. However, we believe that we can streamline the process and limit the occasions for Administrator's review through the use of threshold criteria.

c. Review of Final Decisions Only

Seven commentors stated that the language in the proposed § 405.1875(a) is so broad as to allow review of Board decisions made during the conduct of prehearing and hearing proceedings; for example rulings on discovery motions. To address this concern, we are revising the regulations to provide that the Administrator may review any "final" decision of the Board with one exception.

Under § 405.1842 a provider may request that a hearing by the Board be bypassed in order to obtain judicial review of any action of the fiscal intermediary that involves a question of law, regulation, or HCFA Ruling relevant to the matters in controversy that the Board is without authority to decide. The Board's determination concerning its authority is not subject to the Administrator's review under § 405.1875(a). However, if there is to be judicial review, the Office of the Attorney Advisor will examine the case only for the purpose of determining whether there are any unresolved factual issues in dispute that are within the authority of the Board to decide. If there are unresolved factual issues, an appropriate motion to remand the case to the Board for further action will be filed with the Court.

d. Review Role of HCFA Staff

One commentor stated that the meaning of the word "review" may be misunderstood, since Board decisions would also be "reviewed" by designated HCFA staff (that is, the Office of the Attorney Advisor) in order to recommend whether the Administrator's authority should be exercised. Another commentor stated that the review role of the staff should be reflected in the regulation.

We agree with these comments and are clarifying § 405.1875(a) by including an explanation of the role of the Office of Attorney Advisor (to the Administrator) in the evaluation of Board decisions. Also, the regulation makes it clear that decisionmaking authority is reserved to the Administrator and the Deputy Administrator.

e. Provider Requests for Review

Two commentors stated their view that the Administrator should conduct a review of the Board's decision whenever a provider requests that it be done. We do not accept this comment. As stated above, all parties and HCFA have equal rights in this respect and will be required to make a showing that review is warranted. The criteria we have adopted should focus review on a smaller percentage of the Board's decisions. The denial of a provider's request for review does not limit the provider's rights to additional review. The provider may, if it wishes, still seek judicial review of any matter in the Board's decision with which it is dissatisfied. However, because of this comment, we are revising the introductory sentence in § 405.1875(c) to clarify that the criteria for deciding whether to review will apply whether or not a party or HCFA has requested review.

One commentor asked why we included a provision for provider requests to the Administrator to review a Board decision. The commentor indicated that the provision seemed unnecessarily cumbersome and suggested that the Administrator should decide whether to review a decision and then simply notify the parties accordingly. We do not agree with the comment. The amendment is intended to provide the parties and HCFA an equal opportunity to call to the Administrator's attention their views concerning the need for a review of the Board's decision. We believe such requests should prove administratively useful in the review process. However, the Administrator will apply the criteria discussed below in deciding whether to review and will not agree to review merely because it has been requested.

f. Time Period for Requesting Review

Six commentors noted that the provisions in § 405.1875 (b) and (e), as proposed, permit the parties to file a request for review and to make other written submissions to the Administrator within a 15-day period. The commentors indicated that the provisions should be clarified to identify whether the materials must be mailed or actually filed within the stated time period. The use of the date of mailing was suggested. Another commentor stated that the provisions did not provide a method of determining the running of the various time periods provided for in the proposed rule. We are clarifying the regulation to respond to these comments. The time periods provided for in the law begin with the receipt by the provider of a Board decision or an Administrator's decision. Therefore, it is appropriate to establish a means for all interested persons to determine this date and, thus, other applicable time periods. To accomplish this, we are revising § 405.1801(a) to provide that the date of receipt will be the date on the return receipt of "return receipt requested" mail. The date of filing and the date for submitting materials will be satisfied by mailing materials within the prescribed period (as evidenced by the postmark) or hand-delivery of the materials (§ 405.1801(a)). Unless otherwise specified in the regulations, these two definitions will apply to all of 42 CFR Part 405, Subpart R, not just to the Administrator's review process.

g. Criterion—Board Decision Is Not Supported by Substantial Evidence

One commentor stated that a determination as to whether a Board decision is supported by substantial evidence cannot be made without a thorough review of the record—a mere threshold review will not suffice. The commentor proposed that § 405.1875(c)(2) be deleted. We do not agree with this comment. First, the Administrator will normally rely on the parties and HCFA to point out the need and basis for the review. Also, under § 405.1875(a), the Attorney-Advisor will thoroughly analyze the case record in order to assist the Administrator in

deciding whether to exercise this review authority. Therefore, the Administrator can decide to review a case on his or her conclusion that it *appears* the Board's decision is not supported by substantial evidence. The material submitted by the parties and HCFA, after notification of the Administrator's decision to review, may then demonstrate that there is substantial evidence, in which case the Administrator could affirm the Board decision. A provider dissatisfied with a Board decision, as affirmed by the Administrator, may still assert its argument in district court that the Administrator's decision is not supported by substantial evidence.

h. Criterion—Significant Unsolved Policy Issue

Four commentors stated that the criterion in § 405.1875(c)(3), under which the Administrator will consider whether it appears that the Board's decision involves a significant unresolved policy issue and review is likely to lead to an HCFA Ruling or a proposed regulation, seems to invite retroactive, *ad hoc* rulemaking. In response to this comment, we are revising this provision to clarify our intent. As revised, the Administrator will review a Board decision under this criterion when it appears that existing HCFA rules or policy instructions are in need of technical clarifications that will be of assistance to providers and the Board in understanding policy.

i. Criterion—Jurisdiction and Authority of the Board

We have added § 405.1875(c)(4) in order to clarify that when the Administrator is reviewing a Board decision to determine whether the Board has incorrectly assumed or denied jurisdiction (as specifically provided for in § 405.1875(a)), the Administrator will also consider whether the Board has incorrectly extended its authority beyond that allowed by statute, regulation, or HCFA Ruling. For example, although the Board may disagree with the provisions of a particular Medicare regulation, the Board cannot overrule the regulation; its decision must conform with the regulation.

Similarly, the Administrator will consider whether a decision of the Board that conflicts with a provision in a Medicare manual conforms with the requirements under the statute, regulations or HCFA Rulings.

j. Criterion—Board Decision Needs Clarity

We have added § 405.1875(c)(5), under which the Administrator will consider whether the decision of the Board requires clarification or amplification, or needs an alternative legal basis for the decision. This provision does not give the Administrator any additional basis for reviewing a Board decision because the prior § 405.1875 provided for the Administrator's review of any decision of the Board. We are adding § 405.1875(c)(5), as well as all of the other review criteria in § 405.1875(c), so that providers will be aware of the criteria that the Administrator will generally apply in deciding whether to review a Board decision.

k. Time Period for Requesting Review

Six commentors stated that the 15-day time periods for requesting review after receipt of the Board decision (§ 405.1875(b)) and for submitting materials to the Administrator after notification that the Administrator will review (§ 405.1875(e)(1)) are both too short. They noted that the parties would have the same 15-day period in which to rebut another party or HCFA's request for review of written submissions. It was suggested that the time periods be deleted or that additional time be provided.

We could not accept this comment and still assure completion of "own motion" review within 60 days. Although the 15-day time limits in paragraph (b) and (e) of § 405.1875 are short, they are necessarily so because the Administrator has only 60 day to complete his or her review. In view of the 60-days limit, we believe the 15-day response times are reasonable. The regulation does not preclude a party or HCFA from submitting a rebuttal to any material submitted to the Administrator, so long as the rebuttal is submitted within the prescribed 15-day period.

l. Time Period for Notification That Administrator Will Review a Board Decision

Six commentors suggested that § 405.1875(d) be revised to provide a specific time period during which the Administrator must advise the parties of his or her decision whether to review a decision of the Board. We do not agree with the comment. As stated in the proposed rule, we intend to notify the parties promptly of the Administrator's decision. The establishment of a specific time period would be inappropriate, since the Administrator must assure full consideration of requests from the parties or HCFA for a review of the Board decision. Because, generally, our action will be taken within 60 days (that is, allowing the parties and HCFA 15 days to request review; notifying the parties and HCFA that the Administrator will review; allowing another 15 days for submission of supporting materials; and then considering and making the final agency decision), it necessarily follows that prompt notification will be made. Therefore, in most cases the parties can expect to be notified of the decision to review by the 45th day. The Administrator will take administrative measures to assure prompt notification.

m. Supporting Views or Exceptions to the Board Decision May Be Submitted to the Administrator

One commentor stated that § 405.1875(e) should be revised to make it clear that a party may submit a brief supporting the Board's decision. We accept this comment and are revising § 405.1875(e)(1)(ii) to provide that a party or HCFA may submit supporting views or exceptions to the Board decision. Unless a party or HCFA is requesting a remand action, a request for review and any supporting information must be limited to issues the Administrator has decided to review and confined to the record of the Board hearing.

n. Written Submissions to the Administrator Will Be Sent Simultaneously to HCFA and the Parties

One commentor suggested that § 405.1875(e)(4), requiring a party to send copies of its written submissions to the Administrator promptly to all other parties, be revised to provide that such action be done "simultaneously" rather than "promptly". It was also suggested that a party be required to certify that it has complied with this requirement. We are accepting the suggested wording change and are revising the regulation accordingly. The same rule shall apply to requests and submissions by HCFA.

o. Prohibition of Ex Parte Communications With the Adminstrator

Nine commentors stated that § 405.1875(f) in the NPRM should be revised to prohibit *ex parte* communications during the entire appeals process. Because this document only involves the Administrator's review, we are not addressing that change now. However, we intend to specifically prohibit *ex parte* communications with the Board when we revise regulations involving Board procedures. The new regulation section § 405.1875(f) prohibits *ex parte*

communications with the Administrator once the Board has issued a final decision. The regulation also requires that all communications contain a certification that a copy of the communication has been served to all other parties and HCFA, as appropriate.

A party must send a copy of any communication with the Administrator to HCFA (specifically, to the Director, Bureau of Eligibility, Reimbursement and Coverage) only if HCFA has already—

(1) Requested that the Administrator review a Board decision;

(2) Responded to a request for review; or

(3) Submitted material after the Administrator has announced that he or she will review a Board decision.

For example, when requesting that the Administrator review a Board decision, a party need not send a copy of that request to HCFA unless the party has received a copy of HCFA's request for the Administrator's review of the Board decision.

One commentor stated that there was no penalty for a violation of the prohibition against *ex parte* communication. The commentor suggested that a violation by a HCFA employee should be recorded in personnel files and that *ex parte* contacts be noted as part of the record and communicated to the parties. We do not accept the comment. We believe the Administrator's refusal to consider the content of any such communication or contact should be sufficient to discourage this practice.

p. Standards for the Administrator's Decisions

Two commentors stated that there is a need for standards in § 405.1875(g) that will govern how the Administrator will decide cases on review. The commentors indicate that the failure to specify which kinds of Board decisions might be reversed is surprising in view of our stated purpose in the NPRM to heighten the importance of Board decisions, promote a stronger, more self-reliant Board and promote greater public confidence in the overall adjudication process. We do not agree with this comment. In our view, the criteria for deciding whether to review, in paragraph (c) of this section, provides clear guidance as to the actions the Administrator may take on review. Also, we believe the establishment of specific standards for reversal would be unnecessarily restrictive. Having considered the criteria and having decided to review, the Administrator must retain sufficient latitude to decide whether to reverse or to take other appropriate action in regard to the particular Board decision.

q. Administrator's Decision Within 60 Days of Provider's Receipt of Board Decision

One commentor stated that § 405.1875(g) should say that the Administrator will render a decision within 60 days after the provider receives the Board decision and that it will be mailed shortly thereafter, but not necessarily within the 60 days. We accept this comment. We are revising § 405.1875(g) to provide that the Administrator will render his or her decision within 60 days after the provider received notification of the Board decision and mail the decision shortly thereafter.

r. Evidence that the Administrator Will Consider

One commentor stated that § 405.1875(g) should state that any decision of the Administrator other than remand "must" be confined to the record of the Board, rather than "will" be confined. We do not accept this comment. "Will" and "must" have specific connotations in our regulations ("must" and "shall" are synonymous) because our general practice is to use "will" to represent a promise or commitment to action on the part of a HCFA or HHS employee. We use "must" or "shall" to impose requirements on others.

We have changed the language proposed in § 405.1875(g) to reflect the fact that in making any decision, including remand, the Administrator will consider: (1) The record of the Board; (2) Information contained in a request for review under § 405.1875(b); (3) Written submissions under § 405.1875(e)(i) in response to the Administrator's decision to review; and (4) Generally known facts that are not subject to reasonable dispute.

The Administrator may rely on prior decisions of the Board, the Administrator and the Courts, and other applicable law, whether or not cited by the parties and HCFA.

Additionally, in considering a request for remand, the Administrator will also consider submittals of new, substantial evidence concerning issues presented to the Board and new issues that have arisen since the case was presented to the Board.

IV. Remands to the Board by the Administrator

As noted above, section 1878(f)(1) of the Social Security Act authorizes the Secretary to reverse, affirm, or modify a decision of the Board provided he or she does so within 60 days. The current regulations do not explicitly authorize the Administrator to remand a case to the Board. However, the U.S. District Court for the District of Columbia concluded that the Secretary's authority inherently includes remanding a case to the Board for further action consistent with the statute and regulations. *Gulf Coast Home Health Services, Inc. v. Califano*, No. 77-1507 (D.D.C. (October 10, 1978)); CCH Medicare-Medicaid Guide, ¶29,250.

In taking the above described position, the Court indicated that reviewing bodies, including administrative reviewers, are generally considered to have inherent power to remand to the initial decisionmaker, absent an explicit statutory ban.

In the NPRM, we proposed to amend the regulations to provide for the remand of a case to the Board by the Administrator. A decision by the Administrator to remand a case would have to be made within 60 days after the provider received notice of the Board's decision. The Administrator's remand would vacate the Board's decision. After remand, the Board would render a new decision which would be final, unless the Administrator exercised his or her review authority. The remand action would not be a final agency decision and would not be subject to judicial review. Also, the Administrator would have the same right to review a decision of the Board after remand as and original Board decision.

a. Request for Remand Not Limited to Record of the Board

Five commentors objected to the provisions in §§ 405.1875 (e) and (g) allowing requests for remand and Administrator decisions regarding remands to go beyond the certified record of the Board. Some suggested that requests not confined to the record of the Board should be accepted only upon a showing of good cause. We do not agree with these comments. The essential purpose of the remand authority is to have the Board consider additional evidence or issues essential to a full development of the record. Typically, the basis for a remand will not be in the record and the Administrator will not be in a position to exercise this authority properly if the parties cannot bring the issue to his or her attention. However, this is the only purpose for which material not in the record could be presented to the Administrator. Also, since a remand is warranted only where significant new evidence or new issues are to be considered, we do not believe that

further restrictions, for example, requiring a showing of "good cause", are necessary.

b. Request for Remand Must Be Made Within 15 Days of Receipt of Administrator's Decision To Review

Four commentors indicated that it was not clear whether a party's request for remand must be submitted within the same 15-day period for requesting the Administrator to review a Board decision (§ 405.1875(b)). We are revising § 405.1875(e)(3) to make it clear that a request for remand by a party or HCFA must be submitted within 15 days of the receipt of the Administrator's decision to review a Board decision.

C. Board May Develop Additional Facts

One commentor indicated that a remand action by the Administrator should not be used to direct a different Board decision. Also, it was suggested that the remand action direct the development of further facts or suggest the applicability of the law or regulations other than those considered by the Board. We accept this comment and are revising §405.1875(h) to clarify that a remand action by the Administrator may direct the Board to take further action with respect to the development of additional facts, new issues, or the applicability of laws, regulations or HCFA Rulings other than those considered by the Board.

d. Administrator's Power To Remand

Eighteen commentors stated that there was no statutory authority or apparent statutory authority for a remand action by the Administrator. The commentors suggested that the proposal did one or more of the following: it interfered with the Board's decisionmaking authority; it delayed or prevented the provider from seeking judicial review; or it improperly extended the applicable 60-day period for Administrator's review.

We do not agree with the comments. We hold to the view expressed by the court in *Gulf Coast* that, absent an explicit statutory ban, the Administrator has the inherent power to remand to the previous decision maker. The court's ruling is especially applicable to the Administrator's review of Board decisions. The purpose of the Administrator's review is not to undertake a new hearing and it must not be used to retry the case. A decision not to review, or to affirm, reverse, or modify a Board decision must be confined to the record of the Board. Thus, we believe that it would be unreasonable to require or expect the Administrator to make a decision when he or she believes that there are additional facts to be considered, new issues to be developed, or law, regulations or HCFA Rulings to be considered other than those already considered, that might affect the outcome. In such cases, further development of the case is best done before the Board where the evidence and issues can be tested in adversary proceedings, with adequate time for a fully considered determination based on the additional findings. The only way this can be accomplished is through the use of remand.

With respect to the views expressed by the commentors, we believe the provision for remand also recognizes that, upon receipt of a Board decision, a party or HCFA may become aware of significant new evidence or new issues that have arisen since it presented the case to the Board. Thus, the party or HCFA has the opportunity to call this to the attention of the Administrator, while it is still possible to take corrective action. The opportunity to perfect a case at the administrative level will benefit all parties and HCFA. However, we believe that it is inappropriate to remand a case for another Board hearing in certain circumstances that could have been prevented by a party or are best resolved without another Board hearing. Therefore, the following are not acceptable bases for a remand:

1. Presentation of evidence existing at the time of the Board hearing that was known or could reasonably have been known;
2. Introduction of a favorable court case that was either not available in print at the time of the Board hearing or was decided after the Board hearing;
3. Change of a party's representative before the Board;
4. Presentation of an alternative legal basis concerning an issue in dispute; or
5. Attempted retraction of a waiver of a right made before or at the Board hearing.

While we expect the need for remands to the Board to arise only rarely, such remands should result in final decisions that consider all relevant facts and issues. Moreover, proper use of this remand authority should expedite a final resolution of the case. If a case went directly to court, rather than being remanded to the Board by the Administrator, it is possible that the court would identify the same shortcomings in the development of the case and would remand it to the Board. However, in such a case, considerable delay would have likely occurred before the Court reached its conclusion to remand. In this situation, a remand by the Administrator would have substantially expedited the case.

e. The Board Has Authority for Scheduling Remand Actions

Twenty-eight commentors objected to the remand provision because there were no time limits within which the Board would be required to act and because the provision permits multiple remands. Thus, there is the potential for extended delays in the provider's opportunity to seek judicial review. Two other commentors stated that a remand should be a final decision which is subject to judicial review. We do not accept these comments. In our view, case management is a responsibility of the Board and we fully expect that the Board will deal with remands on a prompt and, where possible, priority basis. Nonetheless, we are revising § 405.1875(h) to state formally that the Board shall take appropriate action with respect to remands. We wish to say clearly and unequivocally that we do not intend to use the regulation to extend the administrative appeals process or to delay a provider's opportunity to seek judicial review. Our goal is precisely the opposite.

f. Limits on Remand Decisions

Sixteen commentors objected to the remand provision because there were no applicable standards or criteria for determining when remand may be requested or for limiting the Administrator's remand authority. Also, there was no requirement for the Administrator to state the reasons for remand. We have revised the language in § 405.1875(h) to explain fully the limits of a remand decision by the Administrator. The new language describes generally accepted administrative hearing authority and procedures that are already being used. This section now clarifies that: (1) A remand vacates the Board's decision; (2) The Administrator may direct the Board to develop additional facts or new issues, or to consider laws or regulations that have not been applied; and (3) The Board's new decision will constitute a final decision subject to the Administrator's review.

V. Review of Board's Decision About its Jurisdiction

Under current regulations at § 405.1873, the Board decides all questions relating to its jurisdiction to hear a case. The regulations did not specify whether the Administrator and the courts may review a Board finding of no jurisdiction, since there is no final Board decision preceded by a "hearing".

In *Cleveland Memorial Hospital v. Califano*, 444 F. Supp. 125 (E.D.N.C. 1978), the court held that a decision by

the Board denying jurisdiction is a "final decision," reviewable by the court. Otherwise, the court reasoned, the Board could effectively preclude any judicial review of its decisions simply by denying jurisdiction of those claims which it deems to be non-meritorious.

We think the court's conclusion is equally applicable to the question of whether the Administrator has authority to review a Board dismissal for lack of jurisdiction. We have therefore revised § 405.1875(c)(4) to provide clearly for such review authority. If a Board dismissal for lack of jurisdiction were overturned by a court, we think the court would normally remand the case through the Secretary to the Board for a hearing, rather than decide the case on its merits. We believe that a procedure whereby the Administrator may review a Board's dismissal and remand the case to the Board if the Administrator concludes the Board does have jurisdiction, will expedite the entire adjudicative process.

Sixteen commentors supported the basic provision. Another commentor supported the provision, but suggested that it be expanded to include review of Board decisions that it does have jurisdiction to hear a case. We accept this comment and are revising § 405.1875(c)(4) to clarify that such decisions of the Board may also be reviewed by the Administrator.

Five commentors stated that a decision of the Board that it lacks jurisdiction should be the final administrative decision and that the courts should decide any disputed question of jurisdiction. We do not accept this comment. In our view, the Administrator's ability to review a Board decision relating to its jurisdiction to grant a hearing is a proper exercise of the review authority granted under section 1878 of the Act. Also, as a practical matter, we expect that the Administrator's review of such decisions will be of benefit to the parties to the decision, since they can expect a prompt review decision, thereby possibly avoiding unnecessary and lengthy judicial actions.

VI. Timing of Judicial Review After Administrator Declines Review

As noted above, section 1878(f) of the Act gives the Secretary 60 days after the provider is notified of a Board decision in which to affirm, modify or reverse that decision. The same section of the Act, however, also gives the provider just 60 days after being notified of the Board decision, or 60 days after receiving the Secretary's affirmance, modification or reversal, in which to seek judicial review. There is a good deal of concern and confusion because the Secretary's 60 days to act runs concurrently with the provider's 60 days to seek judicial review if the Secretary does not act. If the Administrator (acting for the Secretary) did not act promptly in deciding not to review a Board decision, a provider would be obliged to file a lawsuit (which may well turn out to be unnecessary) or take the risk that it will lose its right to judicial review. We expect to avoid this situation by notifying the provider promptly when the Administrator has declined review.

a. Sixty Days to Seek Review After Notification the Administrator Will Not Review

In the NPRM, we proposed to amend § 405.1877 to allow a provider 60 days in which to seek judicial review from the date it receives notification that the Administrator has declined review.

Nine commentors supported the basic proposal; however, one commentor urged that it include a specific statement that HCFA will not oppose a provider's seeking judicial review on the basis that the statutory time limit has expired.

We now believe that we do not have the authority under the statute to allow a provider 60 days to seek judicial review after notification that the Administrator will not review a Board decision. Section 1878)(f)(1) of the Act provides that, to obtain judicial review of Board decision, a provider must file a civil motion within 60 days after notification of the Board's decision. However, section 1878(f)(1) of the Act contains an exception and allows an additional time period if the Administrator "reverses, affirms, or modifies the Board's decision". However, because an Administrator's decision not to review a Board decision cannot be considered a reversal, affirmance, or modification, HCFA does not have any authority to extend the time period the statute allows for a court appeal. Therefore, if the Administrator declines to review a Board decision, the provider must file its appeal within 60 days of its receipt of the decision of the Board.

b. Sixty Days to Seek Review if Administrator Fails to Make a Final Decision After Announcing that He or She Would Review a Board Decision

Three commentors observed that the proposed regulation fails to state the provider has 60 days in which to seek judicial review from the date the Administrator's time for taking action expires. We accept the comment and are revising the regulation to make clear HCFA's interpretation of the statute that the failure of the Administrator to make a final decision within 60 days after the Administrator has notified the parties and HCFA that he or she has decided to review a Board decision constitutes an affirmation of the decision by the Board. In this situation, the provider has 60 days from the date the Administrator's time for taking action expired, in which to seek judicial review of the Board decision because section 1878(f)(1) of the Act allows a provider 60 days to seek judicial review after the Administrator affirms a Board decision. For example, if the 60 day period during which the Administrator may take action expires on July 1, and the Administrator notifies the parties and HCFA that he or she has decided to review a Board decision and then fails to make a final decision before that date, then HCFA will interpret the statute to mean that the provider will have until the following August 30th (that is, 60 days) to request judicial review.

c. General Concerns

Eleven commentors expressed the following general concerns about the authority for the proposal: (1) If the statute is not clear, it should be amended; (2) the regulation would not be binding on a U.S. Attorney or on the judiciary; (3) there is no guarantee that another interested party would refrain from issuing a challenge on the basis that the time limit had expired; (4) the provision represents an attempt to rewrite the statute. The majority of the commentors indicated that a better solution would be to require that notice of the Administrator's decision whether or not to review be issued within a specified period following the Board's decision.

We do not accept these comments and suggestions. We recognize that a regulatory interpretation of the statute would not necessarily bind a court. It would, however, bind HCFA and as a practical matter, its legal representative, the Department of Justice. Pending a clarifying change in the law, we believe that the proposed interpretation is a useful interim measure. Moreover, we do not believe that setting an arbitrary time limit, of less than 60 days, in which the Administrator must decide whether to review a Board decision would offer a realistic solution to providers' concerns about abbreviated judicial appeal deadlines.

VII. Regulatory Impact Analyses

Executive Order 12291

We have determined that this final rule does not meet the criteria for a major rule that are set forth in section

1(b) of Executive Order 12291. That is, this rule will not:

(1) Have an annual effect on the economy of $100 million or more (our estimate is that this rule will have a negligible economic impact in FY 83);

(2) Cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or

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

Because we do not expect this final rule to increase or decrease the number or complexity of cases that the Administrator reviews, there will be no additional costs to providers or the Federal government under this final rule.

Regulatory Flexibility Analysis

The Secretary certifies, under section 605(b) of the Regulatory Flexibility Act, Pub. L. 96-353, that this final rule that sets forth several changes in the procedures relating to the Administrator's review of Board decisions will not have a significant economic impact on a substantial number of small entities. The reason for the Secretary's certification is that the revised rule will neither increase nor decrease the number or complexity of review decisions made by the Administrator. Therefore, this rule will not have a significant economic impact on anyone.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Part 405, Subpart R is amended as set forth below: Subpart R—Provider Reimbursement Determination and Appeals, is amended as follows:

1. The table of contents for Subpart R is amended by revising the title of § 405.1875 to read as follows:

Subpart R—Provider Reimbursement Determinations and Appeals

* * * * *

Sec.

405.1875 Administrator's review.

* * * * *

2. The authority citation for Subpart R is revised to read as follows:

Authority: Secs. 205, 1102, 1814(b), 1815(a), 1833, 1861(v), 1871, 1872, 1878 and 1886 of the Social Security Act (42 U.S.C. 405, 1302, 1395f(b), 1395g(a), 1395l, 1395x(v), 1395hh, 1395ii, 1395oo and 1395ww).

3. In § 405.1801, paragraph (a) is revised by placing the definitions in alphabetical order, adding definitions for "Administrator", "Administrator's review", "Date of filing" and "Date of receipt", and removing the definition for "Secretary's review" to read as follows:

§ 405.1801 Introduction.

(a) *Definitions.* As used in this subpart: "Administrator" means the Administrator or Deputy Administrator of HCFA.

"Administrator's review" means that review provided for in section 1878(f) of the Act (42 U.S.C. 1395oo(f)) and § 405.1875.

"Board" means the Provider Reimbursement Review Board established in accordance with section 1878 of the Act (42 U.S.C. 1395oo) and § 405.1845.

"Board hearing" means that hearing provided for in section 1878(a) of the Act (42 U.S.C. 1395oo(a)), and § 405.1835.

"Date of filing" and "date of submission of materials" mean the day of the mailing (as evidenced by the postmark) or hand-delivery of materials, unless otherwise defined in this subpart.

"Date of receipt" means the date on the return receipt of "return receipt requested" mail, unless otherwise defined in this subpart.

"Intermediary determination" means the following:

(1) With respect to a provider of services that has filed a cost report under §§ 405.406 and 405.453(f), the term means a determination of the amount of total reimbursement due the provider for items and services furnished to beneficiaries for which reimbursement may be made on a reasonable cost basis under Medicare for the period covered by the cost report.

(2) With respect to a hospital that has filed a cost report and receives payments for inpatient hospital services based on reasonable cost subject to the target rate system (§ 405.463), the term includes a determination of the total amount of payment due the hospital under that system for the period covered by the cost report.

(3) With respect to a hospital that receives payments for inpatient hospital services under the prospective payment system (§§ 405.470–405.477), the term includes a determination of the total amount of payment due the hospital under that system for the hospital's cost reporting period covered by the determination.

(4) For purposes of appeal to the Provider Reimbursement Review Board, the term is synonymous with the phrases "intermediary's final determination" and "final determination of the Secretary", as those phrases are used in section 1878(a) of the Act.

(5) For purposes of § 405.374 concerning claims collection activities, the term does not include an action by HCFA with respect to a compromise of a Medicare overpayment claim, or termination or suspension of collection action on an overpayment claim, against a provider or physician or other supplier.

"Intermediary hearing" means that hearing provided for in § 405.1809.

* * * * *

4. Section 405.1871 is amended by revising paragraph (a) as follows:

§ 405.1871 Board hearing decision and notice.

(a) The Board shall, as soon as practicable after the conclusion of its hearing, render a written decision based upon the record made at such hearing, the record established in support of the determination of the intermediary (see § 405.1803), and such other evidence as may be obtained or received by the Board. Such Board decision shall be supported by substantial evidence when the record of the Board hearing is viewed as a whole and shall cite applicable law, regulations, and HCFA Rulings. A copy of the decision shall be mailed to all parties to the hearing at their last known addresses and, at the same time, to the Administrator and HCFA.

* * * * *

5. Section 405.1875 is revised to read as follows:

§ 405.1875 Administrator's review.

(a) *General rule.* (1) Except for a Board determination under § 405.1842 that it lacks the authority to decide an issue, the Administrator, at his or her discretion, may review any final decision of the Board, including a decision under § 405.1873 about the Board's jurisdiction to grant a hearing. The Administrator may exercise this discretion on his or her own motion, in response to a request from a party to a

Board hearing or in response to a request from HCFA.

(2) The Office of the Attorney Advisory will examine the Board's decisions, the requests made by a party or HCFA and any submission made in accordance with the provisions of this section in order to assist the Administrator in deciding whether to exercise this review authority.

(b) *Request for review.* A party or HCFA requesting the Administrator to review a Board decision must file a written request with the Administrator within 15 days of the receipt of the Board decision.

(c) *Criteria for deciding whether to review.* In deciding whether to review a Board decision, either on his or her own motion or in response to a request from a party to the hearing or HCFA, the Administrator will normally consider whether it appears that:

(1) The Board made an erroneous interpretation of law, regulation or HCFA Ruling;

(2) The Board's decision is not supported by substantial evidence; or

(3) The case presents a significant policy issue having a basis in law and regulations, and review is likely to lead to the issuance of a HCFA Ruling or other directive needed to clarify a statutory or regulatory provision;

(4) The Board has incorrectly assumed or denied jurisdiction or extended its authority to a degree not provided for by statute, regulation or HCFA Ruling; and

(5) The decision of the Board requires clarification, amplification, or an alternative legal basis for the decision.

(d) *Decision to review.* (1) Whether or not a party or HCFA has requested review, the Administrator will promptly notify the parties and HCFA whether he or she has decided to review a decision of the Board and, if so, will indicate the particular issues he or she will consider.

(2) The Administrator may decline to review a case or any issue in a case even if a party has filed a written request for review under paragraph (b) of this section.

(e) *Written submissions.* (1) Within 15 days of receipt of a notice that the Administrator has decided to review a Board decision, a party or HCFA may submit to the Administrator, in writing:

(i) Proposed findings and conclusions;

(ii) Supporting views or exceptions to the Board decision;

(iii) Supporting reasons for the exceptions and proposed findings; and

(iv) A rebuttal of the other party's request for review or other submissions already filed with the Administrator.

(2) These submissions shall be limited to issues the Administrator has decided to review and confined to the record of the Board hearing.

(3) A party or HCFA, within 15 days of a receipt of a notice that the Administrator has decided to review a decision, may also request that the decision be remanded and state reasons for doing so. Reasons for a request to remand may including new, substantial evidence concerning—

(i) Issues presented to the Board; and

(ii) New issues that have arisen since the case was presented to the Board.

(4) A copy of any written submission made under this paragraph shall be sent simultaneously to each other party to the Board hearing and to HCFA, if HCFA has previously—

(i) Requested that the Administrator review a Board decision or filed a written submission in response to a party's request for review.

(ii) Responded to a party's request for review; or

(iii) Submitted material after the Administrator has announced that he or she will review a Board decision.

(f) *Ex parte communications prohibited.* All communications from any of the parties or HCFA about a Board decision being reviewed by the Administrator must be in writing and must contain a certification that copies have been served on the parties and HCFA, as appropriate. The Administrator will not consider any communication that does not meet these requirements or is not submitted within the required time limits.

(g) *Administrator's decision.* (1) If the Administrator has notified the parties and HCFA that he or she has decided to review a Board decision, the Administrator will affirm, reverse, modify or remand the case.

(2) The Administrator will make this decision within 60 days after the provider received notification of the Board decision and will promptly mail a copy of the decision to each party and to HCFA.

(3) Any decision other than to remand will be confined to—

(i) The record of the Board, as forwarded by the Board;

(ii) Any materials submitted under paragraphs (b) or (e) of this section; and

(iii) Generally known facts that are not subject to reasonable dispute.

(4) The Administrator may rely on prior decisions of the Board, the Administrator and the courts, and other applicable law, whether or not cited by the parties and HCFA.

(h) *Remand.* (1) A remand to the Board by the Administrator vacates the Board's decision.

(2) The Administrator may direct the Board to take further action with respect to the development of additional facts or new issues, or to consider the applicability of laws or regulations other than those considered by the Board. The following are not acceptable bases for remand—

(i) Presentation of evidence existing at the time of the Board hearing that was known or reasonably could have been known;

(ii) Introduction of a favorable court case that was either not available in print at the time of the Board hearing or was decided after the Board hearing;

(iii) Change of a party's representation before the Board;

(iv) Presentation of an alternative legal basis concerning an issue in dispute; or

(v) Attempted retraction of a waiver of a right made before or at the Board hearing.

(3) After remand, the Board will take the action requested in the remand action and issue a new decision.

(4) The new decision will be final unless the Administrator reverses, affirms, modifies, or again remands the decision in accordance with the provisions of the section.

6. Section 405.1877 is amended by revising paragraph (a), redesignating paragraphs (b) through (e) as (d) through (g), respectively and adding new paragraphs (b) and (c) to read as follows:

§ 405.1877 Judicial review.

(a) *General rule.* Section 1878(f) of the Act permits a provider to obtain judicial review of a final decision of the Board, or of a reversal, affirmation, or modification by the Administrator of a Board decision, by filing a civil action pursuant to the Federal Rules of Civil Procedure within 60 days of the date on which the provider received notice of—

(1) A final decision by the Board; or

(2) Any reversal, affirmance, or modification by the Administrator.

The Board's decision is not final if the Administrator reverses, affirms or modifies the decision within 60 days of the date on which the provider received notice of the decision.

(b) *Administrator declines to review a Board decision.* If the Administrator declines to review a Board decision, the provider must file its appeal within 60 days of receipt of the decision of the Board.

(c) *Administrator does not act after reviewing a Board decision.* If the Administrator notifies the parties that he or she has decided to review a Board

decision and then does not make a decision within the 60 days allotted for his or her review, this subsequent inaction constitutes an affirmance allowing a provider an additional 60 days in which to file for judicial review, beginning with the date the Administrator's time expires for taking action under § 405.1875(g)(2).

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; No. 13.774, Medicare-Supplementary Medicare Insurance)

Dated: May 11, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: August 19, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-27300 Filed 10-6-83; 8:45 am]

BILLING CODE 4120-03-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1043

[Ex Parte No. MC-5; Sub-1]

Motor Carriers of Property Minimum Amounts of Bodily Injury and Property Damage Liability Insurance; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Modification of final rules; correction.

SUMMARY: At 48 FR 43331, September 23, 1983, the Commission adopted final rules to implement statutory requirements by adopting minimum amounts of insurance at levels prescribed by the Secretary of Transportation for for-hire interstate motor carriers of property regulated by the Commission. That notice contained 2 inadvertent errors, which this notice corrects.

FOR FURTHER INFORMATION CONTACT: Alice K. Ramsay, (202) 275-0854

or

Delores Patterson, (202)275-0898.

The notice published at 40 FR 43331, is corrected as follows:

(1) Amendatory instruction (1), on page 43333, is corrected by changing the heading of § 1043.2 to read as follows:

§ 1043.2 Security for the protection of the public: Minimum limits.

(2) Amendatory instruction (2), on page 43334, is removed, and amendatory instructions (3) and (4) are corrected by redesignating them as instructions (2) and (3).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-27428 Filed 10-6-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of American Ginseng Harvested in 1983 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final findings and rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a treaty regulating the international trade of certain wildlife and plant species. Exports of wildlife or plants listed in Appendix II of CITES may occur if a Scientific Authority has advised a permit-issuing Management Authority that such exports will not be detrimental to the survival of the species, and if a Management Authority is satisfied that the wildlife or plants were not obtained in violation of laws for their protection. American ginseng *(Panax quinquefolius)* is listed on CITES Appendix II.

This notice announces final findings by the Scientific and Management Authorities for the United States concerning the export of American ginseng *(Panax quinquefolius)*. These are final determinations for the States that have satisfied the Service's requirements on the export of specimens taken in the 1983 harvest season. Such findings are made on a State-by-State basis.

DATE: These findings are effective on October 7, 1983. The comment period remains open until December 31, 1983, for States that have not yet satisfied the Service's requirements.

ADDRESS: Please send correspondence concerning this notice to the Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Material received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of the Scientific Authority, Room 536, 1717 H Street, NW., Washington, D.C., or at the Federal Wildlife Permit Office, Room 621, 1000 N. Glebe Road, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: Scientific Authority: Dr. Richard L. Jachowski, Chief, Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240, Telephone (202) 653-5948.

Management Authority: Mr. Thomas J. Parisot, Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, P.O. Box 3654, Arlington, Virginia 22203, Telephone (703) 235-1937.

Ginseng Export Program: Mr. S Ronald Singer, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, P.O. Box 3654, Arlington, Virginia 22203, Telephone (703) 235-2418.

SUPPLEMENTARY INFORMATION: This is the last of three noticies concerning the Service's findings on export of American ginseng *(Panax quinquefolius)* taken in the 1983 season.

The first notice (48 FR 26651; June 9, 1983) announced the Service's intention to develop findings on export of 1983 ginseng and invited comment on the guidelines that it proposed to use in making such findings. The second notice (48 FR 40750; September 9, 1983) announced the proposed export findings for ginseng on a State-by-State basis. The present notice establishes final export findings for States that have satisfied the Service's requirements for current information about American ginseng population status, management, harvest and State controls. The comment period remains open for States that have not yet satisfied the Service's requirements for such information.

Information Considered

For American ginseng, the Service sought the following information in its August 31, 1982, proposal regarding each affected State:

1. Historic, present, and potential distribution of ginseng on a county basis, using county outline maps, and indicating the source(s) and accuracy of this information. Include also the distribution of preferred habitat on a regional or statewide basis, indicating recent trends in loss or protection of habitat.

2. Approximate number or density of ginseng populations per county or region and the approximate number of all known ginseng localities in the State, including also the source of this information.

3. Average population size (i.e., "stand" or "patch") or local abundance of wild ginseng on a county or regional basis in the State, indicating the source(s), general reliability and accuracy of the information. Include also any changes from previous years or differences from historical population sizes.

4. An assessment of population trends on a county or regional basis indicating whether populations of ginseng are believed to be increasing, decreasing, stable, extirpated or unknown. Include source(s) and general reliability and accuracy of this information.

5. Assessment of harvest intensity on a county or regional basis indicating whether the relative intensity is heavy, moderate, light, none, or unknown, and any changes from previous years. Provide also the known or estimated number of ginseng collectors in the State.

6. A county map showing those counties in which ginseng is reported to be commercially cultivated. Include figures on the amount of cultivated ginseng reported to be harvested annually and certified for export from the State.

7. Average number of roots per pound harvested, preferably on a county or regional basis or, if these are not available, on a statewide basis. Include also an assessment of any trend in root sizes or number of roots per pound over previous years.

8. Describe the State's current research program on ginseng and its progress, including a summary of results so far obtained.

9. Describe harvest practices, including regulations on length of harvest season, any harvest restrictions such as size and age of collected plants, and any seed planting requirements.

10. Information concerning, or a copy of, State law or regulation on: (a) State registration of dealers (cost of registration, season or operation for dealers), (b) dealer maintenance of records, (c) dealer reporting system of ginseng commerce, (d) State certification of legal ginseng take, (e) samples of current year dealer license, and (f) samples of diggers license, if any, giving cost of license and dates of harvest season.

11. Describe State official certification system for wild and cultivated ginseng legally harvested within the State, including controls to minimize uncertified ginseng from moving into or from the State. A sample of current year export certificate must be on file in the Federal Wildlife Permit Office.

12. Name, address, and telephone number of the State staff person to contact concerning those information needs.

Scientific Authority Advice

American ginseng (*Panax quinquefolius*) is listed on CITES Appendix II. CITES regulates international trade in species included in Appendix II through a system of permits issued by designated Management Authorities in each party nation. Export permits for Appendix II species are to be issued only if a Management Authority receives advice from a Scientific Authority that the export will not be detrimental to the survival of the species.

The Endangered Species Act of 1973, as amended in 1979, designates the Secretary of the Interior as both Management Authority and Scientific Authority of the United States for purposes of CITES. These functions are carried out by the Fish and Wildlife Service. Management Authority responsibilities are delegated to the Associate Director—Federal Assistance. Scientific Authority responsibilities are delegated to the Associate Director—Research.

Criteria for Scientific Authority advice were elaborated in the May 26, 1981, Federal Register. Advice on the export of American ginseng and other Appendix II species addressed in these findings is given in a general way, applicable to any specimens harvested in particular States in a given season, rather than on a permit-by-permit basis. The reasons for this practice are that (1) the individual exporters who apply for permits are unable to supply much information about the sources of specimens or the effect of their harvest on the populations of the species, (2) the species in question are subject to the commercial exploitation, and it would be burdensome to both the industry and the Service to make separate Scientific Authority decisions on each of the many permits, and (3) the development of general advice on a State-by-State basis enables the Service to conduct a comprehensive review of the status of the species in question and the effect of international trade on its survival.

Advice based on such a review is more meaningful than it would be if it were based only on information supplied in connection with individual permit requests.

General criteria used by the Service in determining if export will not be detrimental to the survival of a species are as follows:

1. Whether similar export has occurred in the past and has not reduced the numbers or distribution of the species, nor caused signs of ecological or behavorial stress within the species, or in other species of the affected ecosystem.

2. Whether life history parameters of the species and the structure and function of its ecosystem indicate that the present frequency of export will not appreciably reduce the number or distribution of the species nor cause signs of ecological or behavioral stress within the species or in other species of the affected ecosystem.

3. Whether such export is expected to increase, decrease, or remain constant in frequency.

The Service is applying these criteria in advising on whether export of ginseng will not be detrimental to the survival of the species by evaluating (1) information from each State on past, present, and potential geographic distribution, relative frequency, local abundance, population trends, and harvest intensities on a county-by-county basis, and (2) State research and management programs for this species, including a limited harvest season.

As described in the June 9, 1983, notice (48 FR 26651), the Service is using information compiled beginning in 1977 to justify multi-year findings under CITES. Even though multi-year findings are made, the Service will continue to monitor the status of ginseng each year, and will retain the option of revising the findings at any time if new information shows compelling reason for a change.

The Office of the Scientific Authority has determined that the export of ginseng harvested in the following States during the 1982–84 seasons will not be detrimental to the survival of the species: Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Tennessee, Virginia, West Virginia, and Wisconsin.

Management Authority Findings

Exports of Appendix II species are to be allowed under CITES only if a Scientific Authority has advised that they will not be detrimental to the survival of the species, and if a Management Authority is satisfied that the animals or plants were not obtained in contravention of laws for their protection.

Management Authority criteria for approval of American ginseng exports, on a State-by-State basis, are that the State has adopted the following regulatory measures: (1) State registration of dealers purchasing ginseng in the State, (2) Requirements that such dealers maintain records of their commerce in ginseng and report their ginseng commerce to the State at specified intervals, and (3) Certification by State officials of ginseng shipped from the State, to authenticate that the ginseng was lawfully taken from wild or cultivated sources within the State.

In 1980, the Service announced that the Management Authority would approve export of artificially propagated ginseng only from the States approved

for export of wild-collected ginseng because they had the programs necessary to document the source of the plants (45 FR 80444; December 4, 1980). The Service is continuing this practice, but it will also approve the export of artificially propagated ginseng from other States if they can provide similar documentation to minimize the risk that wild-collected plants are exported as cultivated.

Furthermore, in the notice of August 31, 1982 (47 FR 38369–38373), the Service explained that it was strengthening the "Certification of Legal Take" requirement for ginseng moved from the State or origin. This was done because experience has shown the value of a State official personally inspecting and certifying ginseng leaving the State of origin. It is by such an inspection of ginseng roots and records of ginseng commerce that the State official can document that the roots in question were legally taken from the wild or were artifically propagated in that State.

Recognizing that certain States might not be able to implement such a certification program in time for the 1982 season, the Service announced in its notice of October 4, 1982 (47 FR 43701) that other forms of State certification, that had been approved for the 1981 harvest season, would be accepted only for the 1982 harvest season.

Beginning with the 1983 harvest season, all States seeking export approval for their wild or cultivated American ginseng were required to have a legally mandated ginseng program that includes, among items discussed in "Information Considered," provisions for a State official to examine and certify all ginseng moved from the State of origin. This certification must include verification of the State of origin, legal taking, year of take, weight of shipment, whether wild or artifically propagated, date of certification, shipment number, dealer's State registration number, and signatures of both the dealer and State offcial certifying the ginseng.

It was decided to grant multi-year export approval (1982–84) only to those States having a current ginseng program that included a State inspection and certification system and otherwise satisfied the criteria of both the Scientific and Management Authorities. Those States are Georgia, Kentucky, Minnesota, North Carolina, Vermont (artifically propagated only), and Virginia. States satisfying all criteria of both the Scientific and Management Authorities, except for the State inspection and certification system, were granted export approval only for the 1982 season. States approved only for 1982 export may not be granted further approval until a legally mandated ginseng program is developed. Those States were Arkansas, Illinois, Indiana, Iowa, Maryland, Ohio, Missouri, Tennessee, West Virginia, and Wisconsin.

Export Approval

The Service approves export of ginseng lawfully taken during the 1982–84 seasons in the following States, on the grounds that both Scientific Authority and Management Authority criteria have been met: Arkansas, Georgia, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Vermont (artifically propagated only), Virginia, West Virginia, and Wisconsin (wild only).

The Service approves export of ginseng lawfully taken during the 1982 (only) season in the following State : Illinois.

The Service approves export of ginseng lawfully taken during the 1982 and 1983 (only) seasons in the following States: Indiana, Tennessee, and Wisconsin (artifically propagated only).

The Service does not grant general approval for exports of American ginseng taken from any other State during the 1982–84 harvest seasons. For all other States not named above, either the taking of American ginseng was not allowed by the State during the 1982 season, the species did not occur in the State, or the State did not provide the Service with information on which to base Scientific Authority and Management Authority findings. The Service does not grant general approval for international export of American ginseng from such States.

Information from States and records of the Service's evaluation of this information are available for public inspection at the Office of the Scientific Authority (for Scientific Authority advice) or at the Federal Wildlife Permit Office (for Management Authority findings).

The Service holds the view that every attempt should be made to provide the public with the greatest possible opportunity to comment on regulations. On June 9, 1983, the Service published a preliminary notice (48 FR 26651) of its intent to propose findings on American ginseng and other Appendix II species taken during the upcoming harvest season, providing the largest period possible for public comment. On September 9, 1983, the Service published proposed findings (48 FR 40750) for this species, limiting the comment period to 15 days in the opinion that a longer period would be impractical and contrary to the public interest. (See also notice of correction dated September 20, 1983 (48 FR 42840).) It was also recognized that time would be of the essence to publish final findings at the close of that comment period.

The findings announced in this notice are effective immediately. It is the Service's opinion that a delay in the effective date of these regulations after this final rulemaking is published could effect the harvest season already begun in several States and adversely impact State conservation programs for this species by, for example, reducing compliance with State certification and documentation requirements. The Service, therefore, finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, for these frameworks to take effect immediately upon publication. Further, these final findings operate to relieve export restrictions for American ginseng harvested from certain States during specified seasons. An additional reason why these findings may take effect immediately. See 5 U.S.C. 553(d)(1).

Based on a review and evaluation of information contained in the attached Environmental Impact Assessment, I have determined that the final findings on the export of American ginseng taken in the 1983 and 1984 seasons are not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on these final findings is not required.

This rule is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; 87 Stat. 884 as amended), and was prepared by S Ronald Singer, Federal Wildlife Permit Office, telephone (703) 235–2418.

Note.—The Department has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). For ginseng, exporters normally derive their product from the ginseng harvest in a number of States. Therefore, the approval or disapproval of export from any one State would not significantly effect the industry. Furthermore, without this finding and rule, export of American ginseng would be totally disallowed from the United States.

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Accordingly, Part 23 of Title 50, Code of Federal Regulations, is amended as set forty below:

PART 23—ENDANGERED SPECIES CONVENTION

Subpart F—Export of Certain Species

1. In § 23.51 revise paragraph (e) to read as follows:

§ 23.51 American ginseng (Panax quinquefolius)

* * * * *

(e) 1982 through 1984 harvests:

Arkansas, Georgia, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Vermont (artificially propagated only), Virginia, West Virginia, and Wisconsin (wild only).

1982 harvest only: Illinois.

1982–1983 harvest only: Indiana, Tennessee, and Wisconsin (artificially propagated only).

Conditions on findings: Roots must be documented as to State or origin and season of collecting. Wild and artifically propagated roots must be certified by the State as legally collected and such certification must be presented upon export.

Dated: September 30, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-27486 Filed 10-6-83; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 48, No. 196
Friday, October 7, 1983

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

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Claim and Report Submission

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the Child Care Food Program (CCFP) regulations to mandate the submission of claims to State agencies within 60 days of the claiming month and the submission of Program reports by State agencies to the Department within 90 days of the month covered by the report. Exceptions to these limits may be granted at the discretion of the Food and Nutrition Service (FNS). Moreover, this rule proposes to permit sponsoring organizations of day care homes to establish deadlines for their homes to submit meal counts and menu records. Finally, this proposal specifies appeal rights in the case of requests for exceptions. This proposal will have the effect of ensuring timely and accurate reporting of participation data.

Interested parties are invited to comment on this proposal.

DATES: Comments must be received on or before December 6, 1983 to be assured of consideration in the final rule.

ADDRESS: Written comments should be sent to Stanley C. Garnett, Acting Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett at the above address or by telephone at (703) 756-3620.

SUPPLEMENTARY INFORMATION: Classifications: This rulemaking has been reviewed in accordance with Executive Order 12291 and has not been classified as major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation or the ability of U.S. enterprises to compete with foreign based enterprises. This rule has also been reviewed with regard to the requirements of Public Law 96-354. The Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities.

Background

The CCFP is authorized by Section 17 of the National School Lunch Act (NSLA). Public Law 97-370, the 1983 Agriculture appropriations act, mandated that "* * * only final reimbursement claims for service of meals, supplements, and milk submitted to State agencies by eligible schools, summer camps, institutions, and service institutions within sixty days following the claiming month shall be eligible for reimbursement from funds appropriated under this Act." That act further stipulated that "States may receive program funds appropriated under this Act for meals, supplements, and milk served during any month only if the final program operations report for such month is submitted to the Department within ninety days following that month." Finally, Public Law 97-370 further provided that "Exceptions to these claims or reports submission requirements may be made at the discretion of the Secretary."

This provision was included in Public Law 97-370 because, in the past, the Department has experienced serious delays in receiving complete and accurate participation data for the CCFP. Timely and accurate reporting is the key to the CCFP's cash management system. Such reporting enables the Department to monitor Program activity closely throughout the fiscal year and provides the basis for accurately projecting Program obligations and cash needs levels on a month-to-month basis. It also allows for the expeditious closeout of fiscal year Program accounts, thus assisting cash management efforts for the following year.

On May 10, 1983, the Department published a final rule (48 FR 2096) implementing these provisions for Fiscal Year 1983. The final rule was effective only for Fiscal Year 1983. However, the Department considers that the circumstances which occasioned the claim and report submission provision in Public Law 97-370 must not be allowed to repeat. Therefore, the Department is now proposing the following permanent amendments to the CCFP regulations, to be effective during Fiscal Year 1984 and thereafter.

1. Deadlines for Submission of Final Claims and Reports

The Department is proposing that State agencies submit their final monthly reports on participation in the CCFP (FNS 44) within 90 days after the end of the month covered by the report. Recognizing that State agencies must receive complete claims in a timely manner in order to submit the required monthly reports, the Department further proposes to require institution to submit their final claims to the State agency within 60 days of the month covered by the claim. These time limits are the same as those for Fiscal Year 1983 and are intended to enable both State agencies and institutions to deal with delays that may occur from time to time, while still ensuring that the Department receives the necessary data in a timely manner. The Department is proposing to base the deadlines on the dates the Claims for Reimbursement or Program Operations Reports are postmarked and/or submitted to the State agencies or FNS, as appropriate. The language "postmarked and/or submitted" would allow institutions or State agencies to either mail or deliver these documents.

Institutions and State agencies are cautioned that claims which are not submitted within 60 days of the claiming month shall not be paid, and States shall not be authorized to draw funds from the CCFP letter of credit for meals which are not reported within 90 days of the month in which they were served, unless FNS grants an exception. Moveover, while 60 days is the maximum amount of time to be allowed to institutions for claim submission, the Department wishes to emphasize that State agencies will have the discretion to establish earlier time limits, if they so elect.

These proposed rules also revise the deadline for submission of final

Financial Status Reports (SF–269s) by State agencies. It is proposed that these reports be postmarked and/or submitted to FNS within 120 days after the end of the fiscal year instead of the current 150 days. The revised deadline would allow State agencies 60 days, after claims for reimbursement for the last month of the fiscal year are due, in which to finalize payments and close program accounts for the fiscal year. When the current 150 day deadline was established, claims for reimbursement were due 90 days after the end of the fiscal year. This allowed State agencies 60 days in which to finalize their program activities. The proposed 120 day deadline for the final SF–269 would maintain this 60 day time period for State agencies and provide a more timely program closeout.

2. Adjustments

The Department expects that all claims and reports submitted by the 60th and 90th days respectively will be final and will contain the most accurate data available at the time of submission. Nevertheless, the Department recognizes that adjustments may need to be made on occasion. With respect to both claims and reports, downward adjustments reflecting the fact that all or part of a final claim was no properly payable shall always be made, regardless of when the overpayment is discovered. Such adjustments may be required by the findings of audits or reviews or they may be due to the discovery of errors in the final claims.

This requirement does not represent a change in policy. The current regulations require the recovery of funds that were not properly payable, and the Department considers such a mandate essential to sound management. Moreover, when overpayments are collected, it is equally important to adjust the report filed by the State agency. By the same token, final reports which overstate the number of meals served shall be adjusted downward immediately, regardless of when the overstatement is discovered.

Upward adjustments to final claims and reports will be made on the following basis. If a claim has been submitted within the 60 day time limit, the State agency may, if it elects, make upward adjustments as long as these adjustments are completed in time to be reflected in the final FNS–44 report for the claim month, due within 90 days of the claim month. Such adjustments may be made on the basis of either a request submitted by the institution, or the State's discovery that a valid claim had been underpaid. After the 90 day time limit for submission of the final FNS–44 Report, no upward adjustments to either claims or reports can be made unless FNS grants an exception.

3. Exceptions

Exceptions to the deadlines for submitting both claims and reports and for making upward adjustments, except as specified above, may be granted only by FNS on a case-by-case basis. As noted above, the State agency may elect to make upward adjustments to claims after the 60th day has passed, provided that the claim was properly submitted by the 60th day and that the adjustment can be made in time to be reflected in the State's final FNS–44 Report. For example, an institution properly submits its claim on the 58th day after the claiming month. Subsequent to this submission, the institution discovers that additional meals could be claimed for that month. A request for an upward adjustment is submitted to the State agency on the 80th day after the claiming month. Since the request has been sumitted in sufficient time to be reflected in the State's final FNS–44, the State agency may elect to approve the upward adjustment without referring to FNS. The same principle would apply if the State agency discovered that it had inadvertently underpaid the institution.

However, the State agency is not required to act on requests for upward adjustments submitted after the 60 day claiming deadline but prior to the 90 day reporting deadline. If the State agency does not wish to approve such an adjustment, the upward adjustment can be made only if FNS grants an exception to the 60 day deadline for submitting claims. Moreover, if a request for an upward adjustment is not submitted in time to be included in the State's final FNS–44, *only* FNS can grant an exception, since it would also be necessary to grant the State an exception to the 90 day reporting deadline. Finally, if a claim is submitted after the 60 day deadline, the claim can be paid *only* if FNS grants an exception.

In order to receive an exception from FNS, it will be incumbent upon the institution to demonstrate that an exception is justified. The Department considers that the 60 day time limit for submission of claims allows institutions sufficient time to prepare and submit final claims based on actual data. FNS will apply the same criterion to requests from States for exceptions to the 90 day reporting limit.

4. Sanctions

The Department also wishes to emphasize that if State agencies consistently submit inaccurate data which later requires adjustments, corrective action may be required in accordance with 7 CFR Part 235. As noted above, the Department will approve upward adjustments to reports after the submission deadline only if the State can demonstrate that an exception to the 90 day limit is justified. In the case of downward adjustments, modifications must always be made. However, if the downward adjustment is needed because of an error on the State's part or because the State agency submitted estimated data on its final report, the Department may require the State agency to take appropriate corrective action to ensure that this situation does not continue. In this regard, the Department also wishes to remind State agencies that the failure to submit accurate final reports within 90 days may also result in sanctions against the State. The maximum sanction which may be imposed could result in the loss of up to one hundred percent of the funds to which a State agency would be entitled during a fiscal year under Part 235 for the administration of the CCFP.

5. Appeals

Because of the nature of the exception process, disapprovals by FNS of requests for exceptions will not be subject to review by State hearing officials or, in the case of Regional Office administered programs (ROAPs), by the FNS Administrative Review Staff. Section 17(e) of the National School Lunch Act requires that a fair hearing be given to any institution aggrieved by *State* action. Section 16(b) of the *Child Nutrition Act* authorizes the Secretary of Agriculture to settle, adjust, compromise or deny any claim arising under that Act or the *National School Lunch Act*. This authority has been delegated to the Administrator of FNS and FNS Regional Administrators and is not subject to delegation to States. Because the final decision concerning the exception request will not be "State action," no appeal is required by Section 17. Institutions may appeal the decision by State agency not to forward an exception request for a final decision, since in these instances the appeals would involve administrative decisions which are "State action."

6. Sponsor Agreements

Finally, the Department recognizes that sponsoring organizations of day care homes may have difficulty meeting the 60 day time limit for submission of claims if they do not receive records from their homes in a timely fashion. Therefore, the Department is proposing to permit sponsors to establish time limits for their homes to submit

appropriate records. Any due dates would need to be approved by the State agency and stated in the written agreement which sponsors execute with their day care providers.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, the Department is proposing to amend 7 CFR Part 226 as follows:

PART 226—CHILD CARE FOOD PROGRAM

1. Section 226.6 is amended by adding a new paragraph (j)(11), to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(j) *Institution appeal procedures.* * * *

(11) Appeals shall not be allowed on decisions made by FNS on requests for exceptions to the claim submission deadlines stated in § 226.10(c).

* * * * *

2. Section 226.7(d) is revised to read as follows:

§ 226.7 State agency responsibilities for financial management.

* * * * *

(d) *Reports.* Each State agency shall submit to FNS a final report of Child Care Food Program Operations (FNS–44) for each month no more than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not postmarked and/or submitted within this time limit unless FNS grants an exception. Upward adjustments to a State's report shall not be made after 90 days from the month covered by the report unless an exception is granted by FNS. Downward adjustments shall always be made regardless of when it is determined that such adjustments need to be made. Each State agency shall also submit to FNS a quarterly Financial Status Report (SF–269) on the use of Program funds. Such reports shall be submitted no later than 30 days after the end of each fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. A final Financial Status Report for each fiscal year shall be submitted to FNS within 120 days after the end of the fiscal year. FNS shall not be responsible for reimbursing unpaid Program obligations reported later than 120 days after the close of the fiscal year in which they were incurred.

* * * * *

3. In § 226.10, paragraphs (c), (d) and (e), are revised to read as follows:

§ 226.10 Program payment procedures.

* * * * *

(c) Claims for reimbursement shall report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of Child Care Food Program Operations required under § 226.7(d). In submitting a claim for reimbursement, each institution shall certify that the claim is correct and that records are available to support the claim. Independent proprietary Title XX centers for months in which not less than 25 percent of enrolled children were Title XX beneficiaries shall submit the percentages of enrolled children receiving Title XX benefits for the month covered by the claim. Sponsoring organizations of such centers shall submit the percentage of enrolled children receiving Title XX benefits for each center for the claim month. Sponsoring organizations of such centers shall not include in any claim those centers in which less than 25 percent of enrolled children were Title XX beneficiaries for the month claimed.

(d) All records to support the claim shall be retained for a period of three years after the date of submission of the final claim for the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the end of the three year period as long as may be required for the resolution of the issues raised by the audit. All accounts and records pertaining to the Program shall be made available, upon request, to representatives of the State agency, of the Department, and of the U.S. General Accounting Office for audit or review, at a reasonable time and place.

(e) If the first or last month of Program operations for any fiscal year contains 10 operating days or less, such month may be added to the Claim for Reimbursement for the appropriate adjacent month. However, Claims for Reimbursement may not combine operations occurring during the ending month of a fiscal year with the beginning month of the next fiscal year. A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency not later than 60 days following the last day of the month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not filed within 60 days shall not be paid unless FNS determines that an exception should be granted. The State agency shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in amounts claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of Child Care Food Program operations (FNS–44) for the claim month as required under 226.7(d). Downward adjustments in amounts claimed shall always be made regardless of when it is determined that such adjustments are necessary. Upward adjustments in amounts claimed which are not reflected in the final FNS–44 for the claim month cannot be made unless an exception is granted by FNS.

* * * * *

4. In § 226.18, a new paragraph (b)(10) is added to read as follows:

§ 226.18 Day care home provisions.

* * * * *

(b) * * *

(10) If the State agency has approved a time limit for submission of meal records by day care homes, that time limit shall be stated in the agreement.

* * * * *

Although this rule does establish certain reporting deadlines, the actual reporting or recordkeeping requirements associated with the rule have not been changed. The requirements for the Child Care Food Program Claim Form (FNS–82) were approved by the Office of Managment and Budget (OMB) for use through September 1985 (0584–0055). The monthly report Form (FNS–44) and the form used to adjust this report (FNS–44A) were approved by OMB for use through August 1985 (0584–0078).

(Sec. 2, Pub. L. 95–627, 92 Stat. 3603, 42 U.S.C. 1766 and Pub. L. 97–35)

Dated: October 3, 1983.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 83-27445 Filed 10-6-83; 8:45 am]

BILLING CODE 3410-30-M

Federal Crop Insurance Corporation

7 CFR Part 441

Proposed Table Grape Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby issues a new part in Chapter IV of Title 7 of the Code of Federal Regulations to prescribe procedures for insuring table grapes effective for the 1984 and succeeding crop years. The intended effect of this rule is to provide insurance for table grapes as a separate commodity from wine grapes. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than December 6, 1983, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 (June 11, 1981). It has been determined under such procedures that this action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that: (1) This action is not a major rule as defined in Executive Order No. 12291 (February 17, 1981); (2) this action will not increase the Federal paperwork burden on individuals, small businesses, and other persons; and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as defined in Executive Order No. 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

FCIC is soliciting comments on this rule for 60 days after publication in the **Federal Register**. All written comments made pursuant to this action will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, during regular business hours, Monday through Friday.

Background

The grape crop insurance program is presently applicable to growers of both wine and table grapes; however, experience has indicated that, in order for there to be an equitable application, there should be separate regulations prescribing the procedures for insuring table grapes. This judgement has evolved from discussions with producers and processors where such grapes are produced. With the proposal of a table grape crop insurance program, FCIC is responding to many requests for such a program.

List of Subjects in 7 CFR Part 441

Crop insurance, Table grapes.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to issue a new Part 441 in Chapter IV of Title 7 of the Code of Federal Regulations, effective for the 1984 and succeeding crop years, to be known as 7 CFR Part 441—Table Grape Crop Insurance Regulations, to read as follows:

PART 441—TABLE GRAPE CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1984 and Succeeding Crop Years

Sec.

441.1 Availability of table grape insurance.
441.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
441.3 OMB control numbers.
441.4 Creditors.
441.5 Good faith reliance on misrepresentation.
441.6 The contract.
441.7 The application and policy.
Appendix A—Counties Designated for Table Grape Crop Insurance

Authority: Sections 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1984 and Succeeding Crop Years

§ 441.1 Availability of table grape insurance.

Insurance shall be offered under the provisions of this subpart on table grapes in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which table grape insurance will be offered.

§ 441.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for table grapes which shall be shown on the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 441.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 441) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 441.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary tansfer shall not entitle the holder of the interest to any benefit under the contract except as provided by the policy.

§ 441.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the table grape insurance contract, whenever—

(a) An insured person under a contract of crop insurance entered into

under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but whch the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and;

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 441.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the table grape crop as provided in the policy. The contract shall consists of the application, the policy, the appendix, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the service offices.

§ 441.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the table grape crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date for the county on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the service office for the county and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1984 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a table grape contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1983 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37; 400.38, first published at 48 FR 1023, January 10, 1983) and may be amended from time to time for subsequent crop years. The provisions of the Table Grape Insurance Policy are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Table Grape Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We shall provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. *Causes of loss.*

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption;

(6) Or direct Mediterranean Fruit Fly damage;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6). Direct Mediterranean Fruit Fly damage shall be actual physical damage to the grapes on the unit which, as determined by us, causes such grapes to be unmarketable and shall not include unmarketability of such grapes as a direct result of a quarantine, boycott, or refusal to accept the grapes by any entity without regard to actual physical damage to such grapes.

b. We shall not insure against any loss of production due to:

(1) The neglect or malfeasance of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good table grape management practices;

(3) Damage resulting from the impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. *Crop, Acreage, and Share Insured.*

a. The crop insured shall be any insurable variety of grapes which are grown for harvest as table grapes and which are grown on insured acreage on which the cultural practices to produce table grapes are carried out, as determined by us, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year shall be grapes grown on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we shall elect.

c. The insured share shall be your share as landlord, owner-operator, or tenant in the insured grapes at the time insurance attaches.

d. We do not insure any acreage:

(1) Which the vines, after being set out, have not reached the number of growing seasons designated in the actuarial table;

(2) Which has not produced an average of 150 lugs of table grapes per acre; or

(3) Which does not have acceptable records of production or with less than 90 percent stand of bearing vines based on the original planting pattern, unless inspected by us and considered acceptable and we agree in writing to insure such acreage.

e. Where insurance is provided for an irrigated practice:

(1) You shall report as irrigated only the acreage for which you have adequate facilities and water to carry out a good grape irrigation practice at the time insurance attaches; and

(2) Any loss of production caused by failure to carry out a good grape irrigation practice, except failure of the water supply from an unavoidable cause occurring after the insurance attaches, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to time insurance attaches.

3. *Report of Acreage, Share, Yield, and Where Applicable, Practice.*

You shall report on our form:

a. All the acreage of grapes in the county on which cultural practices to produce table grapes are carried out in which you have a share;

b. The practice;

c. Your share at the time insurance attaches;

d. The number of bearing vines (if less than 90 percent of a stand based on the original planting pattern); and

e. The most recent year's production records for insurable acreage on each unit.

You shall designate separately any acreage that is not insurable. You shall report if you do not have a share in any grapes grown in the county. This report shall be submitted annually on or before the reporting date established by the actuarial table. We may determine all indemnities on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. *Production Guarantees, Coverage Levels, and Prices for Computing Indemnities.*

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual Premium.

a. The annual premium is earned and payable at the time insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	156	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest shall accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract shall be transferred to:

(1) The contract of your estate or surviving spouse in case of your death;

(2) The contract of the person who succeeds you if such person had previously participated in the vineyard operation; or

(3) Your contract if you stop vineyard operations in one county and start vineyard operations in another county.

d. If participation is not continuous, any premium shall be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a shall be applicable.

6. *Deductions for Debt.*

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. *Insurance Period.*

Insurance attaches on February 1 and ends on the earliest of:

a. Total destruction of the grapes on the unit;

b. Discontinuance of cultural practice(s), as determined by us, to produce table grapes;

c. The date harvest should have started on the unit, as determined by us, on any acreage which will not be harvested as table grapes;

d. Discontinuance of harvesting of table grapes on the unit;

e. Final adjustment of a loss; or

f. October 31 of the calendar year in which the grapes are normally harvested.

8. *Notice of Damage or Loss.*

a. In case of damage or probable loss:

(1) You must give us written notice if during the period before harvest, the grapes on any unit are damaged and you decide not to further care for or harvest any part of them.

(2) You must give us notice:

a. At least 15 days before the beginning of harvest if you anticipate a loss on any unit; or

b. Immediately, if damage occurs within 15 days prior to harvest or during harvest.

(3) If you are going to claim an indemnity on any unit notice shall be given not later than 48 hours:

(a) After total destruction of the grapes on the unit;

(b) After discontinuance of harvest on the unit; or

(c) Discontinuance of cultural practice(s) to produce table grapes; or

(d) Before harvest would normally start if any acreage on the unit is not to be harvested as table grapes.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the grapes on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the grapes which are not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. *Claim for Indemnity.*

a. Any claim for indemnity on a unit shall be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the grapes on the unit;

(2) Discontinuance of harvesting as table grapes on the unit;

(3) The date harvest should have started on the unit, as determined by us, on any acreage which will not be harvested as table grapes;

(4) Final harvest of the unit; or

(5) The calendar date for the end of the insurance period.

b. We shall not pay any indemnity unless you:

(1) Establish the total production of grapes on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity shall be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of grapes to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you results in a lower premium determined to be due, the indemnity shall be reduce proportionately.

e. The total production to be counted for a unit shall include all harvested and appraised production.

(1) Mature grape production:

(a) Which, due to insurable causes, does not grade No. 1 or better, or would not meet these requirements if properly handled, in accordance with the Official United States Standards, shall be adjusted by:

(i) Dividing the value per lug of such grapes, as determined by us, by the price per lug of U.S. No. 1 grapes; and

(ii) Multiplying the result by the number of lugs of such grapes.

The applicable price for No. 1 grapes shall be the week ending price for the district as reported by the Federal State Market Service, Fresno, California on the earlier of: The week before the loss is adjusted or the week before such grapes were sold.

(2) Appraised production to be counted shall include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes, failure to follow recognized good table grape management practices and any change in management practices (Green Drop);

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use shall be considered production unless such acreage:

(a) Is not put to another use before harvest of grapes becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(4) If any grapes are harvested before normal maturity, the production of such grapes shall be increased by the factor obtained by dividing the price per lug received for such grapes by the price per lug for fully matured grapes, as determined by us.

(5) We may determine the amount of production of any unharvested grapes on the basis of field appraisals conducted after harvest was discontinued.

(6) When you have elected to exclude hail and fire as insured causes of loss and the grapes are damaged by hail or fire, appraisals for uninsured causes shall be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(7) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You shall not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We shall pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no event will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared imcompetent, or if you are an entity other than an individual and such entity is dissolved after the grapes are planted for any crop year, any indemnity shall be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance and fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. *Concealment or Fraud.*

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. *Transfer of Right to Indemnity on Insured Share.*

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have all rights and responsibilities under the contract.

12. *Assignment of Indemnity.*

You may only assign to another party your right to an indemnity for the crop year on our form and with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. *Subrogation. (Recovery of loss from a third party.)*

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery shall at our option belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

14. *Records and Access to Farm.*

You shall keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all grapes produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us shall have access to such records and the farm for purposes related to the contract.

15. *Life of Contract: Cancellation and Termination.*

a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract shall continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract shall terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) if deducted from an indemnity claim shall be the date you sign such claim; or

(2) if deducted from payment under another program administered by the United States Department of Agriculture shall be the date such payment was approved.

d. The cancellation and termination dates are:

State, California: Cancellation and termination date, January 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution. *However,* if such event occurs

after insurance attaches for any crop year, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

f. The contract shall terminate if no premium is earned for five consecutive years.

16. *Contract Changes.*

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table shall provide the price election which you shall be deemed to have elected. All contract changes shall be available at your service office by October 31 preceding the cancellation date. Acceptance of any changes shall be conclusively presumed in the absence of any notice from you to cancel the contract.

17. *Meaning of Terms.*

For the purposes of grape crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices where applicable, insurable and uninsurable acreage, and related information regarding grape insurance in the county.

b. "Contiguous land" means land which is touching at any point, except that land which is separated by only a public or private right-of-way shall be considered contiguous.

c. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

d. "Crop year" means the period beginning with the date insurance attaches and extending through normal harvest time and shall be designated by the calendar year in which the grapes are normally harvested.

e. "Harvest" means picking the grapes from the vines.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Lug" means 22 pounds of table grapes in the Coachella Valley district, California, and 23 pounds in all other California districts.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

k. "Table grapes" means the grapes which are grown for commercial sales as fresh grapes, on acreage which the cultural practices to produce fresh marketable grapes were carried out.

l. "Tenant" means a person who rents land from another person for a share of the grapes or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of grapes in the county, located on contiguous land, on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the grapes on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement between you and us. Units as herein defined will be determined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss and we may consider any acreage and share of or reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. *Descriptive Headings.*

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. *Determinations.*

All determinations required by the policy shall be made by us. If you disagree with our determinations you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. *Notices.*

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Appendix A—Counties Designated for Table Grape Crop Insurance

The following counties are designated for Table Grape Crop Insurance under the provisions of 7 CFR 441.1.

California: Fresno, Kern, Kings, Madera, Mendocino, Merced, Monterey, Napa, Riverside, San Benito, San Bernadino, San Joaquin, San Luis Obispo, Sonoma, Stanislaus, and Tulare.

Done in Washington, D.C. on June 20, 1983.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Merritt W. Sprague,

Manager.

Dated: October 3, 1983.

[FR Doc. 83-27427 Filed 10-6-83; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 904

Grapefruit Grown in a Designated Area in California; Order Directing That a Referendum be Conducted, Determination of Representative Period for Voter Eligibility, and Designation of Referendum Agents To Conduct the Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among growers of grapefruit grown in a designated area in California, to determine whether they favor termination of the marketing order program.

DATES: Representative period, September 1, 1982 through August 31, 1983.

ADDRESSES: See information contained in supplementary information.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, telephone (202) 447-5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. This action is required to determine whether growers favor termination of the marketing order for grapefruit grown in the production area as specified in the order.

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), it is hereby directed that a referendum be conducted among the growers who, during the period September 1, 1982 through August 31, 1983 (which period is hereby determined to be a representative period for the purposes of such referendum), were engaged in the production area in the production of grapefruit covered by the marketing order to ascertain whether termination of the marketing order is favored by the growers.

Roland G. Harris and John H. Clark, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 845 South Figueroa, Suite 540, Los Angeles, California 90017, telephone (213) 688-3190, are hereby designated as referendum agents of the Secretary of Agriculture to conduct the referendum. The procedure applicable to the referendum shall be the "Procedure for

the Conduct of Referenda in Connection with Marketing Orders for Fruit, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR Part 900.400 *et seq.*).

Copies of the text of the aforesaid marketing order may be examined in the office of the referendum agents or the Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Ballots to be cast in the referendum may be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 904

Marketing orders, Grapefruit, California.

Dated: October 3, 1983.

John R. Block,

Secretary.

[FR Doc. 83-27363 Filed 10-6-83; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Revision of Backfitting Process for Power Reactors; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction to advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission is initiating a rulemaking for the purpose of establishing requirements for the long-term management of its process for the imposition of new regulatory requirements for power reactors. This process, commonly referred to as "backfitting", can include both plant specific changes and generic changes that are proposed to be applied to one or more classes of power reactors.

FOR FURTHER INFORMATION CONTACT: William M. Shields, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: 301-492-8693.

The **Federal Register** dated Wednesday, September 28, 1983, page 44218, Column 3, under the subheading: Separate Views of Commissioner Roberts, Sentence 1, should read as follows: "I do not believe that this advance notice * * * process."

Dated at Washington, D.C. this 4th day of October, 1983.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 83-27432 Filed 10-6-83; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM80-10-000]

Proposal Continuing Stay for an Additional 120 Days of Phase II of the Incremental Pricing Program of the Natural Gas Policy Act

Issued: October 5, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed continuation of stay for an additional 120 days of Order No. 80.

SUMMARY: On May 6, 1980, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 80, 45 FR 31,622 (May 13, 1980)) to implement Phase II of the incremental pricing program of the Natural Gas Policy Act (NGPA). That program was, among other things, intended by Congress to shield residential and commercial natural gas users from the higher prices permitted by the NGPA. Phase II expanded those subject to the program's surcharge pricing mechanism to include other industrial users in addition to the large industrial facilities using gas as boiler fuel covered by Phase I. Several persons filed petitions for rulemaking and for stay of the October 15, 1983, effective date of the final rule. The Commission granted petitioners' request to stay the effective date of Order No. 80 by a separate document published elsewhere in this issue. That order stays the effective date for sixty days. The Commmission here proposes to extend the stay for an additional 120 days or until Commission completes its reconsideration of Order No. 80, whichever is earlier.

DATES: Comments and requests for a public hearing on the proposal to extend the stay must be received on or before October 28, 1983.

ADDRESS: Comments and requests for a public hearing must be submitted in writing to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 and should refer to Docket No. RM80-10-000. An original and fourteen copies must be filed.

FOR FURTHER INFORMATION CONTACT: Barbara K. Christin, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Order Granting a Stay of Effective Date of Order No. 80 for 60 Days and Proposing Continuation of Stay for an Additional 120 Days

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing this order to stay for sixty days the effective date of the final regulations promulgated in Order No. 80.[1] Those regulations expand the scope of the incremental pricing program in accordance with section 202 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. IV 1980). Absent Commission action, Order No. 80 would become effective October 15, 1983. The Commission is also proposing to extend the stay for an additional 120 days or until the Commission completes reconsideration of the regulations in Order No. 80, whichever is earlier.

The Commission has received petitions for rulemaking and stay of the effective date of Order No. 80 from the American Gas Association and Indicated Industrial Consumers, and jointly from Interstate Natural Gas Association of America, Petrochemical Energy Group, and United Distribution Companies. Petitioners request the Commission to reopen the rulemaking proceedings in this docket and to stay the final rule pending the outcome of the reopened proceedings. For the reasons discussed below, the Commission grants petitioners' request for a temporary stay of the effective date of Order No. 80 for sixty days. In addition, the Commission requests comments on a proposal to extend the stay for an additional 120 days, or until the Commission completes its reconsideration of the final rule in light of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Consumer Energy Council of America v. Federal Energy Regulatory Commission*,[2] whichever is earlier.

[1] Order No. 80, issued May 6, 1980, Docket No. RM80-10, 45 FR 31,622 (May 13, 1960).

[2] 673 F. 2d 425 (D.C. Cir. 1982); *aff'd mem. sub nom.* Process Gas Consumers Group v. Consumer Energy Council of America, 51 U.S.L.W. 3935 (U.S. July 6, 1983), *reh. denied* 52 U.S.L.W. 3187 (U.S. Sept. 9, 1983).

II. Background

Under Title II of the NGPA, Congress established an incremental pricing program which, among other things, was intended to shield residential and commercial natural gas users from the higher natural gas prices permitted by Title I of the NGPA. Under this program, the "incremental costs" of natural gas were to be passed through from interstate pipelines to certain industrial users by means of a surcharge pricing mechanism.

The Commission issued regulations to implement the incremental pricing program in two phases. The first phase was implemented by regulations issued on September 28, 1979 (44 FR 57,726, October 5, 1979).[3] Under those regulations, only large industrial facilities that use natural gas as boiler fuel are subject to incremental pricing.

Section 202 of Title II required the Commission to promulgate a second phase (Phase II) rule by May 9, 1980, amending the scope of the incremental pricing program to include other industrial users. Section 202 also directed the Commission to submit the Phase II rule to Congress for review. The rule would not become effective if disapproved by either House within a thirty-day review period.

On May 6, 1980, the Commission issued the Phase II rule (Order No. 80) as required by the NGPA. That rule extended the incremental pricing program to all industrial users except those exempted specifically by the NGPA and applied to all industrial gas consumption exceeding 300 Mcf per day. It also set a uniform price ceiling for natural gas sold to industrial users at the price of high sulfur No. 6 residual fuel oil. In the order the Commission stated:

> The Commission believes that it was neither requested or authorized to second-guess the social and economic judgments that the Congress made in enacting Title II. The role of the Commission under Section 202 is more limited. Instead, the Commission is instructed to bring its technical expertise to bear on the design of a workable Phase II rule that can best advance the purposes set by the Congress. It is up to the Congress to decide whether this Phase II submittal meets adequately the social and economic goals of the incremental pricing program or, indeed, whether those goals are still appropriate.[4]

Order No. 80 was submitted to Congress pursuant to section 202(c) of the NGPA, and was to become effective ninety days following the expiration of the thirty-day review period if neither House of Congress passed a resolution of disapproval. On May 20, 1980, the House of Representatives passed a resolution of disapproval of the Phase II rule by a vote of 369–34.

Subsequent to that vote, the Commission received one application for rehearing of the final rule. The applicant argued that the legislative veto provision of section 202 was unconstitutional and asked the Commission to make the Phase II rule effective at the end of the ninety days following the thirty-day Congressional review period.

On August 1, 1980, the Commission denied the application for rehearing and revoked Order No. 80.[5] In the August 1 order the Commission explained that in the event the legislative veto provision was held unconstitutional, the Phase II rule should not become effective because the Commission had relied upon Congress to examine the social and economic benefits of extending the incremental pricing program, and had not "independently evaluated whether the Phase II rule meets the social and economic goals of the Title II incremental pricing program." [6]

Subsequently several persons sought judicial review of the constitutionality of the legislative veto provision and the Commission's revocation of the Phase II rule. The D.C. Circuit held the legislative veto provision of section 202(c) of the NGPA is severable from section 202 and unconstitutional. The court also held that the Commission's revocation of the Phase II rule was invalid because the Commission did not provide adequate notice and opportunity for comment, and ordered that the rule take effect thirty days from the date of the court's decision. The court stated, however, that the Commission "may consider whether to amend the substance of the rule or, in order to provide time for sufficient consideration, whether to postpone the effective date further." [7]

On July 6, 1983, the United States Supreme Court affirmed the decision of the D.C. Circuit, and, on September 9, 1983, denied rehearing of its decision. Accordingly, on September 15, 1983, the D.C. Circuit issued its mandate. As a result, absent Commission action, Order No. 80 will become effective October 15, 1983.

III. Further Proceedings and Temporary Stay of Effective Date

The petitions for rulemaking and stay request the Commission to reopen the record in the Phase II proceeding so the Commission may evaluate the need to amend or revoke the Phase II rule. Pending the outcome of such a proceeding, petitioners ask the Commission to stay the effectiveness of the Order No. 80 regulations.

The Commission agrees with petitioners that the Phase II rule should be reconsidered and intends to thoroughly reassess it in light of the relevent judicial opinions and a complete and updated record, as well as current market conditions. The Commisson intends to issue a notice of proposed rulemaking within the next sixty days to reopen the rulemaking proceeding in this docket and to request public comment on various alternatives that may be available to it, including revocation of the Phase II rule or amendments to the rule which would limit its applicability or better serve the purposes of Title II of the NGPA. In addition, comments will be requested on the extent of the Commission's authority under Title II, including its exemptive authority under section 206(d), and whether the Commission is now required to promulgate a Phase II rule.

The Commission believes that it would be in the public interest to stay the effective date of the Phase II rule for sixty days while it receives comments on whether to further stay the effective date until Order No. 80 is reconsidered by the Commission. While the court permitted a thirty-day delay in the effective date of Order No. 80, the Commission believes that this does not allow sufficient time either from a practical standpoint or under the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*, for adequate notice and opportunity for comment and reconsideration of the matter.[8] If the rule were to take effect on October 15, 1983, pipelines, distributors, and industrial users would be faced with an enormous administrative burden which may be unwarranted if the rule is ultimately modified or revoked. At the same time, allowing the rule to go into effect would not result in a counterbalancing benefit to the residential and commercial users that the incremental pricing program was designed to protect. For the most part, oil prices are below, or comparable to, natural gas prices so that the

[3] The regulations issued on September 28th were contained in two dockets, Docket Nos. RM79–14 and RM79–21.

[4] 45 FR at 31,622.

[5] Order Denying Rehearing and Revoking Amendments made by Order No. 80, issued August 1, 1980, Docket No. RM80–10, 45 FR 54,741 (Aug. 18, 1980).

[6] 45 FR at 54,742.

[7] 673 F.2d at 479.

[8] *See generally* Motor Vehicle Manufacturers Association of the United States v. State Farm Mutual Automobile Insurance Co., 51 U.S.L.W. 4953 (U.S. June 24, 1983).

incremental surcharges that would be flowed back to consumers would be minimal, if any at all. On balance, the rule would not result in any beneficial effects at this time.

For these reasons, the Commission finds that the public interest requires a stay for sixty days of the effective date of Order No. 80 and that good cause exists to make this order effective immediately. Futhermore, the Commission proposes to extend the stay for an additional 120 days after December 13, 1983 or until it completes its reconsideration of the final regulations in Order No. 80, whichever is earlier. Comments are requested on this proposal.

Accordingly, the petitions for rulemaking and stay are granted to the extent they request a stay of the effective date of Order No. 80. Thus, the final regulations in Order No. 80 will become effective December 14, 1983, unless the Commission extends the stay as proposed.

IV. Comment Procedures

The Commission invites all interested persons to submit written data, views, or arguments concerning its proposal to extend the stay of the regulations in Order No. 80 for an additional 120 days or until it completes its reconsideration of those regulations. In addition, any interested person may request in writing that a public hearing be held for the oral presentation of data, views, and arguments on whether the stay should be extended. All comments and all requests for a public hearing should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 on or before October 28, 1983 and should refer to Docket No. RM80–10–000. An original and fourteen copies should be filed. All written submissions will be placed in the public file which has been established in this docket and which is available for public inspection through the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426. The Commission will schedule a public hearing if it receives any requests for the oral presentation of comments.

By the Commission.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 83–27590 Filed 10–6–83; 9:57 am]
BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 140

Licensed Indian Traders and Bureau of Indian Affairs Employees Contracting and Trading With Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is publishing a proposed rule which permits certain contracting and trading between employees of the Bureau of Indian Affairs and Indians.

DATE: Comments must be received on or before November 7, 1983.

ADDRESS: Send written comments to John W. Fritz, Deputy Assistant Secretary—Indian Affairs (Operations), Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: John G. Combs, Bureau of Indian Affairs, Division of Personnel Management, telephone number (202) 343–8718.

SUPPLEMENTARY INFORMATION: Public Law 96–277 (94 Stat 544; 18 U.S.C. 437) repealed certain previous laws (25 U.S.C. 68, 68a, 87a and 441) dating back to the Indian Intercourse Act of 1834 (4 Stat. 38; 25 U.S.C. 68) governing trading between Federal employees and Indians. These laws were inflexible and did not take into account modern conditions. The current law gives the President, who delegated his authority by Executive Order No. 12328 to the Secretary of the Interior and the Secretary of Health and Human Services, respectively, authority to regulate trade between employees of the Bureau of Indian Affairs and the Indian Health Service and Indians.

This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by the Departmental Manual, 209 DM 8.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this proposed rule.

This document prescribes the conditions on which trade between employees of the Bureau of Indian Affairs and Indians is permitted. The recipients of benefits under the proposed regulation will be individuals. Typical transactions allowed by the proposed regulation include the sale or exchange of real estate, homes, automobiles, farming equipment, and personal property. All transactions would be for the personal use of the individuals involved since commercial purchasing and reselling is specifically prohibited by 18 U.S.C. 437.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Department of the Interior has determined that this document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3504(h).

The primary author of this document is Dan E. Squier, Bureau of Indian Affairs, telephone number (202) 343–8718.

List of Subjects in 25 CFR Part 140

Indians, Business and industry, penalties.

Accordingly, Part 140 of Chapter I of Title 25 of the Code of Federal Regulations is proposed to be amended as follows:

PART 140—LICENSED INDIAN TRADERS AND BUREAU OF INDIAN AFFAIRS EMPLOYEES CONTRACTING AND TRADING WITH INDIANS

1. The authority and cross reference sections under the Table of Sections are revised to read as follows:

Authority: Section 5, 19 Stat. 200, sec. 1, 31 Stat. 1066 as amended; 25 U.S.C. 261, 262; 94 Stat. 544 18 U.S.C. 437 unless otherwise noted.

Cross Reference: For law and order regulations on Indian Reservations, see Part 11 of this chapter. For regulations pertaining to business practices on Navajo, Hopi and Zuni reservations, see Part 141 of this chapter. For regulations relating to Interests in Trading With Indians, see 43 CFR 20.735–28, Employee Responsibilities and Conduct.

2. Section 140.5 is revised to read as follows:

§ 140.5 Bureau of Indian Affairs employees not to contract or trade with Indians except in certain cases.

(a) Definitions of terms as used in this part:

(1) "Indian" means any member of an Indian tribe recognized as eligible for the services provided by the Bureau of

Indian Affairs who is residing on a Federal Indian Reservation, on land held in trust by the United States for Indians, or on land subject to a restriction against alienation imposed by the United States. The term shall also include any such tribe and any Indian owned or controlled organization located on such a reservation or land.

(2) "Bureau" or the "Bureau of Indian Affairs" means the Bureau of Indian Affairs and the Office of the Assistant Secretary for Indian Affairs, both in the Department of the Interior.

(3) "Employee" means an officer, employee, or agent of the Bureau of Indian Affairs.

(4) "Secretary" means the Secretary of the Interior.

(5) "Contract" means any agreement made or under negotiation with any Indian for the purchase, transportation or delivery of goods or supplies from any Indian.

(6) "Trading" means buying, selling, bartering, renting, leasing, permitting and any other transaction involving the acquisition of property or services.

(b) With the exceptions provided in subsection (b) of Section 437 of Title 18, the United States Code Section 437 provides that whoever, being an officer, employee, or agent of the Bureau of Indian Affairs, has (other than as a lawful representative of the United States) any interest, in such officer, employee, or agent's name, or in the name of another person where such officer, employee, or agent benefits or appears to benefit from such interest:

(1) In any contract made or under negotiation with any Indian, for the purchase, transportation or delivery of goods or supplies for any Indian, or

(2) In any purchase or sale of any service or real or personal property (or any interest therein) from or to any Indian, or colludes with any person attempting to obtain any such contract, purchase, or sale, shall be fined not more then $5,000 or imprisoned not more than six months or both, and shall be removed from office, notwithstanding any other provision of law concerning termination from Federal employment.

(c) The further subsections of this section authorize certain employees contracting and trading with Indians as authorized by the exceptions in Section 437 of Title 18, United States Code. All such contracting and trading is subject to the express provision of Section 437 that none of the sales or purchases so authorized may be made if the purpose of any such sale, trade, or purchase is that of commercially selling, reselling, trading, or bartering such property.

(d)(1) Under authority granted by Section 437(b)(1) of Title 18, United States Code, employees of the Bureau of Indian Affairs may with the approval of an authorized officer of the Bureau, as designated in (d)(2) of this section, purchase from or sell to an Indian any service or any real or personal property, not held in trust by the United States or subject to a restriction against alienation imposed by the United States, or any interest in such property. In addition, employees may purchase from Indians without approval from an authorized officer of the Bureau any non-trust or unrestricted personal property for home use or consumption the value of which property does not exceed $1,000. Employees may also purchase motor vehicles for their personal use from Indians or sell their personal motor vehicles to Indians without obtaining approval of such purchases or sales from an authorized officer of the Bureau.

(2) As used in paragraph (d)(1) of this section an authorized officer of the Bureau of Indian Affairs for employees on reservations and in agencies or in field service units shall be the superintendent or other officer in charge of the unit in which the employee is employed. The authorized officer for the superintendent or officer in charge is his or her immediate supervisor. The authorized officer for employees in area offices is the Area Director, and the authorized officer for an Area Director is his or her immediate supervisor. The authorized officer for employees in the Central Office is the Deputy Assistant Secretary—Indian Affairs (Operations).

(e) No employee of the Bureau of Indian Affairs may have any interest in any purchase or sale involving property or funds which are either held in trust by the United States for Indians or which are purchased, sold, utilized, or received in connection with a contract or grant to an Indian from the Bureau if such employee is employed in the office or installation of the Bureau which recommends, approves, executes, or administers such transaction, grant, or contract on behalf of the United States, except that, as authorized by Section 437(b)(1) of Title 18, United States Code an employee of the Bureau may have such an interest if such purchase or sale is approved by an authorized officer of the Bureau, as designated in paragraphs (e) (3) to (5) of this section, and the conditions in paragraph (e) (1) and (2) of this section are satisfied to the extent to which they are applicable to the transaction concerned:

(1) The conveyance or granting of any interest in property held in trust or subject to restriction against alienation imposed by the United States is otherwise authorized by law.

(2) Trading by employees with Indians which involves property or funds which are either held in trust by the United States or are subject to restrictions against alienation imposed by the United States must be conducted on the basis of sealed bid or public auction. If the trading involves leases or sales of trust or restricted Indian land it must be conducted on the basis of sealed bids. Such requirements for sealed bid or public auction may only be waived by the Assistant Secretary for Indian Affairs on the basis of a full report showing:

(i) The need for the transaction,

(ii) The benefits accruing to both parties, and

(iii) That the consideration for the proposed transaction shall be not less than the fair market value of the trust or restricted property or interest therein, unless the employee is involved in a transaction in accordance with 25 CFR 152.25 (c) or (d) or 25 CFR 162.5(b) (1), (2), or (3).

(iv) An affidavit as follows shall accompany each proposed transaction: "I (name) (title), swear (or affirm) that I have not exercised any undue influence nor used any special knowledge received by reason of my employment in the Bureau in obtaining the (grantor's, purchaser's, vendor's) consent to the instant transaction."

(3) The authorized officer of the Bureau for employees employed on reservations, in agencies or service units is one who is not a relative by blood or marriage of the employee, and is not employed at the employee's reservation, agency or service unit. That officer must also be employed at not less than one grade level higher than such employee at the Washington, District of Columbia, Central Office or at an Area Office other than that with authority over the employee's reservation, agency, or service unit.

(4) The authorized officer of the Bureau for employees employed in Area offices is one who is not a relative by blood or marriage of the employee, is not employed at the employee's area office, and must be employed at not less than one grade level higher than the employee at the Washington, District of Columbia, Central Office.

(5) The authorized officer of the Bureau for employees employed at the Washington, District of Columbia, Central Office is the Secretary.

(f) Except as provided in subsection (b)(2) of Section 437 of Title 18, United States Code as implemented by this section, nothing in the cited law shall be construed as preventing any employee of the Bureau who is an Indian, of

whatever degree of Indian blood, from obtaining or receiving any benefit or benefits made available to Indians generally or to any member of his or her particular tribe, under any Act of Congress, nor to prevent any such employee who is an Indian from being a member of or receiving benefits by reason of his or her membership in any Indian tribe, corporation, or cooperative association organized by Indians, when authorized under such rules and regulations as the Secretary or his/her designee has prescribed or shall prescribe.

§ 140.6 [Removed]

3. Section 140.6 is revoked.

John W. Fritz,

Acting Assistant Secretary for Indian Affairs.

[FR Doc. 83-27369 Filed 10-6-83; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8-R, Amendment]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Federal Medical Care Recovery Act, Chapter IX

AGENCY: Defense.

ACTION: Proposed amendment of final rule.

SUMMARY: This would amend Chapter IX of the CHAMPUS Regulation, DoD 6010.8-R, by consolidating all federal claims provisions into one Chapter. Federal claims arise when the government has a right to recover money or property from an individual, partnership, association, corporation, governmental body or other legal entity, foreign or domestic, except an instrumentality of the United States. This amendment will clarify the specific procedures and criteria used in the assertion, collection or compromise of federal claims and the suspension or termination of collection action in such claims arising under the operation of CHAMPUS. The title of Chapter IX will be changed from "Federal Medical Care Recovery Act" to "Federal Claims Collection."

When appropriate, these provisions would avoid the expense of court proceedings for both the government and the debtor. These provisions also will reduce administrative handling, provide greater flexibility to recovery effort, and aid in the timely settlement of outstanding federal claims. This change will facilitate the use of the Regulation by CHAMPUS fiscal intermediaries, Uniformed Service claims officers and by the general public.

DATES: Written comments must be received on or before November 7, 1983. This proposed amendment will become effective 30 days from the date of its final publication.

ADDRESS: Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Policy Division, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT:

Tariq Saeed, Policy Branch, OCHAMPUS, telephone (303) 361-3587.

Robert L. Shepherd, Assistant General Counsel, OCHAMPUS, telephone (303) 361-8506.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title.

As originally published, § 199.15 addressed only claims collection activities under the CHAMPUS for third-party liability claims arising under the Federal Medical Care Recovery Act. Claims activities arising under other statutory or contractual grounds were addressed only in the most general terms in other Sections of the regulation. Since the original publication of DoD 6010.8-R, the desirability of consolidating all federal claims provisions into one Chapter and including the specific procedures and criteria used in the assertion, collection or compromise of federal claims and the suspension or termination of collection action on such claims has become evident. This change is intended to facilitate the use of the regulation by those charged with its implementation, including CHAMPUS fiscal intermediaries, Uniformed Service claims officers and by the general public. It also is intended to provide direct and ready access by the general public to the procedures followed by responsible claims asserting authorities in the collection, compromise or settlement of federal claims arising under the operation of the CHAMPUS.

The Federal Claims Collection Act of 1966 (31 U.S.C. 951-953) authorizes the Secretary of Defense, under regulations issued by him, to compromise, or to suspend or terminate collection activities on certain claims under the programs of the Department. The claim must not exceed $20,000, exclusive of interest, and there must be no indications of fraud in connection with the claim. CHAMPUS fiscal intermediaries are required to collect erroneous payments made to beneficiaries, providers, physicians and other suppliers of services by requesting refunds and, if necessary, offsetting such erroneous payments against current payments due or against future claims when possible. However, attempts to recover these erroneous payments are sometimes more time-consuming and costly than is justified by the circumstances. This § 199.15 specifies an alternative to costly and time-consuming collection activities and referrals to other government agencies for additional collection efforts. It allows the Director, OCHAMPUS, or a designee, under authority delegated by the Secretary to negotiate a compromise settlement, or to suspend or terminate collection activities when this is in the government's best interest. When appropriate, compromise, suspension, or termination will avoid the expense of court proceedings for both the government and the debtor. These provisions also will reduce administrative handling, provide greater flexibility to recovery efforts, and aid in the timely settlement of outstanding federal claims.

This amended § 199.15 includes the following major provisions:

- Procedures for the assertion of claims arising under the Federal Medical Care Recovery Act (FMCRA) are set out. That statute provides that when the United States furnishes medical care to a person who is injured or suffers a disease under circumstances creating tort liability in a third party to pay damages for that care, the United States has the right to recover from the third person the reasonable value of the care it provides. Responsibility for effecting recoveries under that statute is vested in the Director, OCHAMPUS. Such claims are to be initially identified by CHAMPUS fiscal intermediaries and referred by them to responsible legal offices of the Uniformed Services for assertion and collection. A claim in excess of $40,000 may be compromised, settled, waived or released only with the prior approval of the Department of Justice.

- The obligations of persons receiving medical care under CHAMPUS where potential third-party liability under the FMCRA exists are specified.

- The conditions for settlement and waiver of FMCRA claims are set out.

• Specific reporting requirements concerning the number of claims referred for collection and the dollar amounts collected under the FMCRA are established.

• Procedures for the collection by recoupment or offset of erroneous CHAMPUS payments are specified. These provisions are promulgated under the authority of the Federal Claims Collection Act of 1966. Erroneous CHAMPUS payments can arise as the result of mathematical errors, payments for care provided to ineligible persons, payments for care which is not an authorized benefit and payments for duplicate claims and other similar circumstances. The first and preferred method of effecting recoupment of these claims is through a voluntary refund in response to a written request or demand for payment. Failing this, collection can be effected, in appropriate cases, by offset against other monies owed by the United States to the debtor and ultimately by referral to appropriate federal agencies for legal action.

• The regulation recognizes that circumstances may arise when claims other than those arising under the Federal Medical Care Recovery Act or from erroneous CHAMPUS payments will be asserted. Examples of these include property damage claims, worker's compensation claims, and insurance claims. The general responsibility for the identification and initial investigation of such claims is vested in CHAMPUS fiscal intermediaries. The responsibility for the evaluation and assertion of these claims is vested in the Director, OCHAMPUS, or a designee.

• Standards for the compromise or the suspension or termination of collection action for claims that do not exceed $20,000 are established. Such compromises, suspensions, or terminations are based principally on an evaluation of the debtor's ability to pay the full amount of the claim within a reasonable time or a determination that the cost of collection action or litigation will exceed the likely amount of recovery (termination), or would not justify enforced collection of the full amount (compromise). The factors that the Director, OCHAMPUS, or a designee, considers in determining the government's inability to enforce collection of the entire claim include the debtor's age, health, assets, present and potential income and possible concealment or improper transfer of assets. If the debtor is deceased, the available assets of the estate will be considered taking into account any liens or superior claims. These provisions conform with the Federal Claims Collection Standards issued jointly by the Attorney General and Comptroller General of the United States under the Federal Claims Collection Act. These joint standards are codified at 4 CFR Part 101, *et seq.*

• An action taken under this Section is not a CHAMPUS fiscal intermediary or OCHAMPUS initial determination for the purpose of invoking the appeals procedure set out in § 199.16 of this regulation. The compromise of any claim asserted under this Section shall be final and conclusive on the debtor and the United States in the absence of fraud, misrepresentation, or mutual mistake of fact. Failure of the Director, OCHAMPUS, or a designee, or any other claims asserting authority under this Section to comply with any provision of these regulations shall not be available as a defense to any debtor. This section does not create a right to have any claim compromised, or collection activities concerning any claim terminated or suspended.

• Conforming changes to other Sections of the regulation have been made to insure consistency with the provisions of this section.

This amendment is being published for proposed rulemaking at the same time as it is being coordinated within the Department of Defense, with the Department of Health and Human Services and with other interested agencies, in order that consideration of both internal and external comments and publication of the final rulemaking document can be expedited.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, it is proposed to amend 32 CFR, Chapter I, Part 199, as follows:

1. 32 CFR 199.10(a)(8) is revised to read as follows:

§ 199.10 Basic program benefits.

(a) * * *

(8) *Double coverage and third party recoveries.* CHAMPUS claims involving double coverage or the possibility that the United States can recover all or a part of its expenses from a third party, are specifically subject to the provisions of § 199.14, "Double Coverage" or § 199.15, "Federal Claims Collection," as appropriate.

* * * * *

2. 32 CFR 199.13(j) is revised to read as follows:

§ 199.13 Claims submission, review and payment.

* * * * *

(j) *Erroneous payments and recoupment*—(1) *Erroneous payments.* Erroneous payments are expenditures of government funds which are not authorized by law or regulation. Such payments are to be recouped under the provisions of § 199.15, "Federal Claims Collection," of this part.

(2) *Claims denials resulting from clarification or change in law or regulation.* In those instances where claims review results in a finding of denial of benefits previously allowed but currently denied due to a clarification or interpretation of law or this regulation, or due to a change in this regulation, no recoupment action need be taken to recover funds expended prior to the effective date of such clarification, interpretation, or change.

* * * * *

3. Section 199.15 is revised to read as follows:

* * * * *

§ 199.15 Federal claims collection.

(a) *General.* Federal claims arise when the government has a right to recover money or property from an individual, partnership, association, corporation, governmental body or other legal entity, foreign or domestic, except an instrumentality of the United States. A claim against several joint debtors or tortfeasors (parties liable for damages) arising from a single incident or transaction is considered to be one claim. It is the purpose of this section to prescribe procedures for investigation, determination, assertion, collection, compromise, waiver and termination of claims in favor of the United States arising out of administration of the Civilian Health and Medical Program of the Uniformed Services.

(b) *Authority.*—(1) *Federal statutory authority.* The following federal statutes provide the basic authority under which claims may be asserted pursuant to this section.

(i) The Federal Claims Collection Act (31 U.S.C. 951–953) is a statute enacted to avoid unnecessary litigation. This statute is implemented by joint regulations issued by the General Accounting Office and the Department of Justice, 4 CFR Parts 101–105. Thereunder, the heads of federal agencies or their designees are required to attempt collection of all claims of the United States for money or property arising out of the activities of their respective agencies. These officials may, with respect to claims that do not exceed $20,000, exclusive of interest,

and in conformity with the standards promulgated in the joint regulations, compromise, suspend, or terminate collection action on such claims.

(ii) The Federal Medical Care Recovery Act (42 U.S.C. 2651–2653) is a statute enacted for the recovery of reasonable value of medical care furnished by the United States to a person who is injured or suffers a disease under circumstances creating tort liability in some third person. This Act is implemented by Executive Order 11060 and an Attorney General Regulation, 28 CFR Part 43.

(2) *Other authority.* Occasionally, federal claims may arise which are grounded, at least in part, in authority other than the federal statutes referenced above. These include, but are not limited to, claims arising under:

(i) State worker's compensation laws.

(ii) State hospital lien laws.

(iii) Contract rights under terms of insurance policies.

(c) *Policy.* The governmental policy of avoiding unnecessary litigation in the collection of claims by the United States for money or property necessitates aggressive agency collection action. The Director, OCHAMPUS, or a designee, will insure that claims asserting personnel are adequately supported to take timely and effective action. Claims arising out of any incident which has or probably will generate a claim in favor of the government will not be compromised now will collection action be terminated by any person not authorized to take final action on the government's claim. By the Act of July 18, 1966 (28 U.S.C. 2415–2418), Congress established a statute of limitation applicable to the government in areas where previously neither limitations nor laches were available as a defense. Claims falling within the provisions of this statute will be processed expeditiously to the General Accounting Office or the Department of Justice, as appropriate, without attempting administrative collection action is such action cannot be accomplished in sufficient time to preclude the running of the statute of limitations.

(d) *Appealability.* This section describes the procedures to be followed in the recovery and collection of federal claims in favor of the United States arising from the operation of the CHAMPUS. Actions taken under this section are not initial determinations for the purpose of the appeal procedures of § 199.16 of this part. However, the proper exercise of the right to appeal benefit or provider status determinations under the procedures set forth in § 199.16 may affect the processing of federal claims arising under this section. Those appeal procedures afford a CHAMPUS beneficiary or participating provider an opportunity for administrative appellate review in cases in which benefits have been denied and in which there is a significant factual dispute. For example, a fiscal intermediary may erroneously make payment for services which are excluded as CHAMPUS benefits because they are determined to be not medically necessary. In that event recoupment action will be initiated by the fiscal intermediary at the same time the fiscal intermediary will offer an administrative appeal as provided in § 199.16 of this part on the medical necessity issue raised by the adverse benefit determination. The recoupment action and the administrative appeal are separate actions. However, in an appropriate case, pendency of the appeal may provide a basis for the suspension of collection in the recoupment. Obviously, if the appeal is resolved entirely in favor of the appealing party, that would provide a basis for the termination of collection action in the recoupment case.

(e) *Delegation.* Subject to the limitations imposed by law or contained in this section, the authority to assert, settle, compromise or to suspend or terminate collection action on claims arising hereunder has been delegated to the Director, OCHAMPUS, or a designee.

(f) *Federal Medical Care Recovery Act claims*—(1) *General.* The Federal Medical Care Recovery Act (FMCRA) (42 U.S.C. 2651–2653) provides that in any case in which the United States is authorized or required by law to furnish hospital, medical, surgical or dental care and treatment to a person who is injured or suffers a disease under circumstances creating tort liability in some third person to pay damages for that care, the United States has a right to recover from the third person the reasonable value of the care and treatment furnished or to be furnished.

(2) *Obligations of persons receiving treatment.* To insure the expeditious and efficient processing of Federal Medical Care Recovery Act claims, any person furnished care and treatment under CHAMPUS, his or her guardian, personal representative, counsel, estate, dependents or survivors may be required:

(i) To provide complete information regarding the circumstances surrounding an injury as a condition precedent to the processing of a CHAMPUS claim involving possible third-party liability.

(ii) To assign in writing to the United States his or her claim or cause of action against the third person to the extent of the reasonable value of the care and treatment furnished, or to be furnished, or any portion thereof;

(iii) To furnish such additional information as may be requested concerning the circumstances giving rise to the injury or desease for which care and treatment are being given and concerning any action instituted or to be instituted by or against a third person;

(iv) To notify the General Counsel, OCHAMPUS, the responsible CHAMPUS fiscal intermediary or the recovery judge advocate or other legal officer who is representing the interests of the government at the time, of a settlement with, or an offer of settlement from a third person; and,

(v) To cooperate in the prosecution of all claims and actions by the United States against such third person.

(3) *Responsibility for recovery.* The Director, OCHAMPUS, or a designee, is responsible for supervising and administering recoveries under the Federal Medical Care Recovery Act. Generally, federal claims arising under this statute will be processed as follows:

(i) *Identification and referral of Federal Medical Care Recovery Act Claims—(a) CHAMPUS fiscal intermediaries.* In most cases where medical care is provided by civilian providers and payment for such care has been made by a CHAMPUS fiscal intermediary, initial identification of potential third-party liability will be to the CHAMPUS fiscal intermediary. In such cases, the CHAMPUS fiscal intermediary is responsible for conducting a preliminary investigation and referring the case to designated appropriate legal officers of the Uniformed Services.

(b) *Initial Identification by other agencies.* Occasionally, cases involving potential third-party liability may be initially identified by offices, agencies or individuals other than a CHAMPUS fiscal intermediary. When this occurs, these cases should be initially referred to the General Counsel, OCHAMPUS, Aurora, CO 80045 for evaluation. If appropriate, the General Counsel may refer the case to the fiscal intermediary or the designated Uniformed Service legal office for action.

(ii) *Processing CHAMPUS claims.* When the CHAMPUS fiscal intermediary initially identifies a claim as involving potential third-party liability, it shall request additional information concerning circumstances of the injury or disease from the beneficiary or other responsible party unless adequate information is submitted with the claim. The information normally is obtained by

requesting the beneficiary to complete a personal injury questionnaire. The CHAMPUS claim will be suspended and no payment issued pending receipt of the third-party liability information. If the requested third-party liability information is not received, the claim will be denied. Of course, a CHAMPUS beneficiary may expedite the processing of his or her CHAMPUS claim by submitting a completed third-party liability questionnaire with the first claim for treatment of an accidental injury. Third-party liability information normally is required only once concerning any single accidental injury. Once the third-party liability information pertaining to a single incident or episode of care is received, subsequent claims associated with the same incident or episode of care may be processed to payment in the usual manner. If, however, the requested third-party liability information is not received, subsequent claims involving the same incident or episode of care will be suspended or denied as stated above.

(iii) *Ascertaining total potential liability.* It is essential that the legal office responsible for asserting the claim against the third-party receive from the CHAMPUS fiscal intermediary a report of all amounts expended by the United States for care resulting from the incident upon which potential liability in the third party is based. Prior to assertion and final settlement of a claim, it will be necessary for the responsible legal office to secure from the CHAMPUS fiscal intermediary updated information to insure that all amounts expended under CHAMPUS are included in the government's claim. It is equally important that information on future medical payments be obtained through the investigative process and included as a part of the government's claim. No CHAMPUS-related claim will be settled, compromised or waived without full consideration being given to the possible future medical payment aspects of the individual case.

(4) *Representing the government's interest.* The government's right to recover the amounts expended for the patient's medical care is independent of the right the patient has to assert a claim against the third person for damages. The existence of the government's right, however, is dependent upon establishing the liability of the third person under ordinary principles of law.

(i) Frequently, collection actions under the Federal Medical Care Recovery Act must be referred to the Department of Justice for litigation. This is usually necessary because either the administrative collection action has been unsuccessful or the injured party has initiated suit and the government must be joined to protect its interests. When such referrals are made by a Uniformed Service legal office, notice of the referral will be provided to the General Counsel, OCHAMPUS . The General Counsel, OCHAMPUS, will assist in the coordination of the case with the Department of Justice and insure tht the position of OCHAMPUS is presented.

(ii) The attorney for the injured beneficiary may be requested to represent the interests of the government and join both claims in a single action against the third person. Such representation of the government's interest normally must be made at no expense to the government. However, when such representation of the government's interest is undertaken by the injured party's attorney for the government, offices and agencies involved will extend full cooperation to the injured party's attorney to insure that the government's interests are fully protected. The coordination of CHAMPUS matters in cases involving CHAMPUS claims with private attorneys representing the interest of the government is the responsibility of the General Counsel, OCHAMPUS. If the attorney representing the injured beneficiary does not wish to join the government's claim with that of his or her client, and court action is required to recover the amount expended for the patient's medical care, intervention or an independent suit may be initiated by the United States for the reasonable value of the care or treatment provided.

(5) *Automobile or other medical payment insurance, no-fault insurance, or uninsured motorist insurance.* Payment may not be made under CHAMPUS for any medical service or supply to the extent that payment has been made or can reasonably be expected to be made for the service or supply under an automobile or medical payment insurance policy or plan (including a self-insured plan), uninsured motorist insurance, no-fault insurance or other forms of medical payments protection. Based upon the results of the investigation described in paragraph (a)(3)(ii) of this section, the fiscal intermediary will segregate all claims involving treatment of personal injuries for which it is apparent that such other insurance is available. These claims will be processed initially as double coverage claims under the provisions of § 199.14 of this part. Any CHAMPUS payments made after the double coverage provisions have been fully complied with will be considered for possible third-party liability recovery under the provisions of this section.

(6) *Worker's compensation claims.* Based upon the results of the investigation described in paragraph (a)(3)(ii) of this section, the fiscal intermediary will segregate all claims involving treatment of work-related injuries. These claims will be processed initially as double coverage claims under § 199.14 of this part dealing with worker's compensation claims. Any CHAMPUS payments made after the double coverage provisions have been fully complied with will be considered for possible third-party liability recovery under the provisions of this section.

(7) *Settlement and waiver of claims.* (i) Uniformed Services legal offices may, within the limits established for them by their respective departments, *(a)* accept the full amount of a claim and execute a release therefor, *(b)* compromise or settle and execute a release of any claim, not in excess of $40,000, which has been referred to it under the provisions of this section, or *(c)* waive, and in this connection, release any claim not in excess of $40,000 in whole or in part, either for the convenience of the government, or if it is determined that collection would result in undue hardship upon the person who suffered the disease or injury resulting in the care and treatment provided under the CHAMPUS.

(ii) A claim in excess of $40,000 may be compromised, settled, waived and released only with the prior approval of the Department of Justice. The Department of Justice shall also be consulted in all cases involving *(a)* unusual circumstances, *(b)* a new point of law which may serve as a precedent, or *(c)* a policy question where there is or may be a difference of views between federal departments and agencies.

(iii) The authority of compromise, settlement, waiver and release granted under this paragraph shall not be exercised in any case in which *(a)* the claim of the United States for such care and treatment has been referred to the Department of Justice, or *(b)* a suit by the third party has been instituted against the United States or the individual who received or is receiving the care and treatment described herein and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

(8) *Reporting requirements.* The Department of Defense is required to submit an annual report to the Attorney General stating the number and dollar amount of claims asserted against, and the number and dollar amount of recoveries from third persons for third-

party federal claims arising from the operation of the CHAMPUS. To facilitate the preparation of this report and to maintain program integrity, the following reporting requirements are established:

(i) Each CHAMPUS fiscal intermediary shall submit on or before January 31 of each year an annual report to the Director, OCHAMPUS, or a designee, covering the 12 calendar months of the previous year. This report shall contain, as a minimum, the number and total dollar amount of claims investigated as potential third-party liability cases; the number and dollar amount of claims referred to Uniformed Services claims offices for further investigation and collection, these latter figures are to be itemized by the individual claims offices to which the cases are referred.

(ii) By January 31 of each year, each Uniformed Service claims office which originates or receives and processes third-party liability FMCRA cases which involve medical care or treatment under CHAMPUS will submit an annual report covering the 12 calendar months of the previous year, to the appropriate Uniformed Service claims authority, setting forth, as a minimum, the number and dollar amount of claims involving CHAMPUS payments received from CHAMPUS fiscal intermediaries, the number and dollar amount of claims involving CHAMPUS payments received from other sources, and the number and dollar amount of claims actually asserted against, and the dollar amount of recoveries from, third persons. A consolidated report, itemized by individual claims offices, shall be provided no later than February 28 of each year, by each Uniformed Service to the Director, OCHAMPUS, or a designee.

(g) *Recoupment of Erroneous Payments*—(1) *Erroneous payments.* Erroneous payments are expenditures of government funds which are not authorized by law or regulation. Examples which are sometimes encountered in the administration of the CHAMPUS include mathematical errors, payment for care provided to an ineligible person, payment for care which is not an authorized benefit, payment for duplicate claims, inaccurate application of the deductible or co-payment, payment for services which were not medically necessary, and false claims.

(2) *Scope.* (i) This section and the sections following contain requirements and procedures for the assertion, collection or compromise of, and the suspension or termination of collection action on claims for erroneous payments against a sponsor, beneficiary, provider, physician or other supplier of services under the CHAMPUS. These provisions are adopted pursuant to the Federal Claims Collection Act (31 U.S.C. 951–953) which requires each agency of the U.S. Government (pursuant to regulations jointly promulgated by the Attorney General and the Comptroller General) to attempt collection of federal claims in favor of the United States arising out of the activities of the agency.

(ii) As used herein, "debtor" means a sponsor, beneficiary, provider, physician, other supplier of services or supplies, or any other person who has for any reason been erroneously paid under the CHAMPUS. It includes an individual, partnership, corporation, professional corporation or association, estate, trust, or any other legal entity.

(3) *Other health insurance claims.* Claims arising from erroneous CHAMPUS payments in situations where the beneficiary has entitlement to insurance, medical service, health and medical plan, or other government program, through employment, by law, through membership in an organization, or as a student, or through the purchase of a private insurance or health plan, shall be recouped under one of the following procedures:

(i) Where the other health insurance plan has not already made benefit payments to the beneficiary or provider, a claim for direct reimbursement will be asserted against the plan, pursuant to the fiscal intermediary's coordination of benefit procedures.

(ii) If the other health insurance plan has made its benefit payment prior to receiving the CHAMPUS request for reimbusement, the recoupment procedures set forth in this section will be followed.

(4) *Claims denials due to clarification or change.* In those instances where claim review results in the denial of benefits previously provided but now denied due to a change, clarification or interpretation of the public law or this regulation, no recoupment action need be taken to recover funds expended prior to the effective date of such change, clarification, or interpretation.

(5) *Good faith payment.* (i) The Department of Defense, through the Defense Enrollement Eligibility Reporting System (DEERS), is responsbile for establishing and maintaining a file listing persons eligible to receive benefits under CHAMPUS. However, it is the responsibility of the Uniformed Services to provide eligible CHAMPUS beneficiaries with accurate and appropriate means of identification. When sources of civilian medicial care exercise reasonable care and precaution in identifying persons claiming to be eligible CHAMPUS beneficiaries and furnish otherwise covered services and supplies to such persons in good faith, CHAMPUS benefits may be paid subject to prior approval by the Director,OCHAMPUS, or a designee, notwithstanding the fact that the person receiving the services and supplies is subsequently determined to be ineligible for benefits. Good faith payments will not be authorized for services and supplies provided by a civilian source of medical care as the result of its own careless identification procedures.

(ii) When it is determined that a person was not a CHAMPUS beneficiary, the CHAMPUS fiscal intermediary and the civilian source of medical care are expected to make all reasonable efforts to obtain payment or recoup the amount of the good faith payment from the person who erroneously claimed to be a CHAMPUS beneficiary. Recoupments of good faith payments initiated by the CHAMPUS fiscal intermediary will be processed pursuant to the provisions of this section. When good faith payments are made by CHAMPUS as the result of (*a*) the issuance of erroneous identification cards, or (*b*) the failure to retrieve identification cards in a timely manner from those persons no longer eligible for CHAMPUS benefits, or (*c*) failure to retrieve outdated identification cards and issue new cards when a person's status changes (such as a change from active duty dependent to dependent of a retiree), it is the responsibility of the Uniformed Service to refund such amounts to CHAMPUS when reasonable efforts to recover the good faith payment are unsuccessful. Refunds by the Uniformed Services shall be made under procedures established by the Director, OCHAMPUS, or a designee.

(6) *Recoupment procedures.* (i) When an erroneous payment is discovered, the CHAMPUS fiscal intermediary normally will be required to take the initial action to effect recoupment. Such action will be in accordance with the provisions of this regulation and the fiscal intermediary's CHAMPUS contract and will include demands for refund or an offset against any other CHAMPUS payment becoming due the debtor. When the efforts of the CHAMPUS fiscal intermediary to effect recoupment are not successful within a reasonable time, recoupment cases will be referred to the General Counsel, OCHAMPUS, for further action in accordance with the provisions of this section. All requests to debtors for refund or notices of intent to offset shall be writing.*

(ii) *Demand for payment.* In all cases, the CHAMPUS fiscal intermediary or OCHAMPUS shall make appropriate written demands upon the debtor in terms which inform the debtor of the consequences of his failure to cooperate. The initial written demand should inform the debtor of the basis for the indebtedness, that interest on the debt at the current rate as determined by the Director, OCHAMPUS, or a designee, will begin to accrue 30 days from the date of the initial demand notification, that payment of the indebtedness is due within 30 days of the date of the initial demand notification and that failure to make payment within the 30-day notice period may result in the reporting of the delinquent debt to commercial credit bureaus. The debtor also should be informed that collection by offset against current or subsequent claims may be taken. Individual CHAMPUS beneficiaries will be notified also that they may request reconsideration of a CHAMPUS recoupment claim based upon an inability to pay. Two written demands, at 30-day intervals, normally will be made by the CHAMPUS fiscal intermediary unless a response to the first demand indicates that further demand would be futile or unless prompt suit or attachment is required in anticipation of the departure of the debtor, of his removal or transfer of assets, or the running of the statute of limitations. There should be no undue time lag in responding to any communication received from the debtor. If these initial efforts at collection are not productive or if immediate legal action on the claim appears necessary, the claim either will be referred by the CHAMPUS fiscal intermediary to the General Counsel, OCHAMPUS, or the CHAMPUS fiscal intermediary will prepare a final notice informing the debtor that the debt is to be offset in whole or in part. When a case is referred to the General Counsel, OCHAMPUS, a third written demand normally will be prepared unless from the record such demand appears futile or otherwise inappropriate.

(iii) *Collection by offset.* Collections by offset will be undertaken administratively on claims which are liquidated or certain in amount in every instance in which this is feasible. The determinations of indebtedness made for recoupment of erroneous CHAMPUS payments rarely involve issues of credibility or veracity. Erroneous CHAMPUS payments most frequently arise from claims submitted by individuals ineligible for CHAMPUS benefits; from claims submitted for services or supplies not covered by CHAMPUS; from claims in which there have been other insurance payments which reduce the CHAMPUS liability and from claims from participating providers in which payment is initially erroneously made to the beneficiary. While these recoupment claims normally involve the resolution of factual questions, these resolutions nearly always require only reference to the documentary evidence compiled in the investigation and processing of the claim. The appeals system described in § 199.16 of this part affords a CHAMPUS beneficiary or participating provider an opportunity for an oral hearing before a hearing officer in cases in which benefits have been denied and in which there is a significant factual dispute. Further, there is no statutory provision for the waiver of indebtedness arising from erroneous CHAMPUS payments, other than the provisions of the Federal Claims Collection Act which allow for the compromise of claims or the termination of collection action under certain circumstances specified in paragraph (h) of this section. Consequently, the pre-offset oral hearing requirements of the Federal Claims Collection Standards (4 CFR 102.3) do not apply to the recoupment of erroneous CHAMPUS payments. CHAMPUS fiscal intermediaries may take administrative action to offset erroneous payments against other current CHAMPUS payments owing a debtor. Payments on the claims of a debtor pending at or filed subsequent to the time collection action is initiated should be suspended pending the outcome of the collection action so that these funds will be available for offset. All or any part of a debt may be offset depending upon the amount available for offset. Only the cases in which no possibility of offset arises within 60 days of the initiation of collection action and on which other collection efforts have been unsuccessful or in which the debtor seeks relief from the indebtedness will be referred to the General Counsel, OCHAMPUS, by the CHAMPUS fiscal intermediary.

(iv) *Collection of installments.* CHAMPUS recoupment claims should be collected in one lump sum whenever possible. However, if the debtor is financially unable to pay the debt in one lump sum, payment may be accepted in regular installments by the CHAMPUS fiscal intermediary or the General Counsel, OCHAMPUS. Installment payments normally will be required on at least a monthly basis and their size will bear a reasonable relation to the size of the debt and the debtor's ability to pay. A CHAMPUS fiscal intermediary should not enter into installment agreements which extend beyond 24 months. OCHAMPUS installment agreements normally should liquidate the government's claim within 3 years. Installment payments of less than $10 per month normally will not be accepted. Any installment agreement with a debtor should include an executed confess-judgment note, comparable to the Department of Justice Form USA–70a.

(v) *Interest.* Interest should be charged on delinquent CHAMPUS recoupment debts and debts collected in installments in accordance with instructions issued by the Director, OCHAMPUS, or a designee. CHAMPUS recoupment claims are considered delinquent at the time they are forwarded to the General Counsel, OCHAMPUS, for collection. When a debt is paid in installments, the installment payments first will be applied to the payment of accrued interest and then to principal, in accordance with the so-called "U.S. Rule."

(vi) *Referral to other federal agencies.* When a debtor is employed by the U.S. Government or is a member or retired member of a Uniformed Service, and collection by offset cannot be accomplished, and there has been no positive response to a demand for payment within 60 days, the Director, OCHAMPUS, or a designee, will contact the employing agency for the purpose of arranging with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order 11222 of May 8, 1965.

(vii) *Referral to debt collection agencies.* Pursuant to the provisions of the Federal Claims Collection Standards (4 CFR 102.5), the Director, OCHAMPUS, or a designee, is authorized to enter into contracts for collection services, including contracts with private collection agencies for the purpose of supplementing and strengthening the collection efforts of the Department of Defense in recouping erroneous CHAMPUS payments. Such contracts will supplement but not replace the basic collection program described herein. The authority to resolve disputes, compromise claims, terminate collection action and initiate legal action may not be delegated in such contracts but will be retained by the Director, OCHAMPUS, or a designee. Individuals or firms that enter into contracts for collection services pursuant to this paragraph are subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, federal and state laws and

regulations pertaining to debt collection practices, including the Fair Debt Collection Practices Act, 15 U.S.C. 1692.

(viii) *Referrals to credit bureaus.* The Director, OCHAMPUS, or a designee, is authorized to provide for the reporting of delinquent debts to commercial credit bureaus. Delinquent debts are those which are not paid or for which satisfactory payment arrangements are not made by the due date specified in the initial notification of indebtedness. These referrals may be made only after publication of a "routine use" for the disclosures involved as required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a. Procedures developed for such referrals must also insure that an accounting of the disclosures is kept which is available to the debtor; that the credit bureaus are provided with corrections and annotations of disagreements by the debtor; and that reasonable efforts are made to assure that the information to be reported is accurate, complete, timely and relevant. Prior to the reporting of any information concerning a delinquent debt to a commercial credit bureau, the debtor must be advised that such reporting will take place within a specified time period unless the debtor makes satisfactory payment arrangement or demonstrates some basis on which the debt is legitimately disputed.

(h) *Compromise, Suspension or Termination of Collection Action*—(1) *Basic considerations.* Federal claims against the debtor and in favor of the United States arising out of the administration of the CHAMPUS may be compromised or collection action thereon may be suspended or terminated if:

(i) The claim does not exceed $20,000 (or $40,000 in the case of claims arising under the Medical Care Recovery Act), exclusive of interest; and

(ii) There is not indication of fraud, the filing of a false claim or misrepresentation on the part of the debtor or any director, partner, manager or other party having an interest in the claim.

(2) *Authority.* CHAMPUS fiscal intermediaries are not authorized to compromise or to suspend or terminate collection action on federal CHAMPUS claims. Only the General Counsel, OCHAMPUS, or a designee, and Uniformed Service legal officers, acting under the provisions of this Section, are so authorized.

(3) *Basis for compromise.* A claim may be compromised for one or more of the following reasons:

(i) The debtor or the estate of a debtor does not have the present or prospective ability to pay the full amount within a reasonable time;

(ii) The debtor refuses to pay the claim in full and the United States is unable to collect the full amount within a reasonable time by legal proceedings;

(iii) There is real doubt the United States can prove its case in court for the full amount claimed either because of the legal issues involved or a bona fide dispute as to the facts; or

(iv) The cost of collecting the claim does not justify enforced collection of the full amount.

(4) *Basis for termination.* Collection action may be terminated for one or more of the following reasons:

(i) The United States cannot collect or enforce collection of any significant sum from the debtor giving due regard to the judicial remedies available to the government, the debtor's future financial prospects and the exemptions available to the debtor under state and federal law;

(ii) The debtor cannot be located, there is no security to be liquidated, the statue of limitations has run and the prospects of collecting by offset notwithstanding the bar of the statute of limitations are too remote to justify retention of the claim;

(iii) The cost of further collection action is likely to exceed any recovery;

(iv) It is determined that the claim is without merit; or

(v) Evidence necessary to substantiate the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment are unavailing.

(5) *Basis for suspension.* Collection action may be suspended for either of the following reasons if future collection action may be sufficiently productive to justify periodic review and action on the claim giving consideration to its size and the amount which may be realized thereon:

(i) The debtor cannot be located; or

(ii) The debtor is unable to make payments on the claim or to fulfill an acceptable compromise.

(6) *Factors considered.* In determining whether a claim will be compromised, or collecton action terminated or suspended, the responsible CHAMPUS collection authority will consider the following factors:

(i) Age and health of the debtor, present and potential income, inheritance prospects, possible concealment or fraudulent transfer of assets and the availability of assets or income which may be realized upon by enforced collection proceedings;

(ii) Applicability of exemptions available to a debtor under state or federal law;

(iii) Uncertainty as to the price which collateral or other property may bring at forced sale; or

(iv) The probability of proving the claim in court, the probability of full or partial recovery, the availability of necessary evidence and related pragmatic considerations.

(7) *Amount of compromise.* The amount acceptable in compromise will be reasonable in relation to the amount that can be recovered by enforced collection proceedings. Consideration shall be given to the following:

(i) The exemptions available to the debtor under state and federal law;

(ii) The time necessary to collect the debt;

(iii) The litigative probabilities involved; and

(iv) The administrative and litigative costs of collection where the cost of collecting the claim is a basis for compromise.

(8) *Payment of compromised claims*—(i) *Time and manner.* Payment of the amount that CHAMPUS has agreed to accept as a compromise in full settlement of a CHAMPUS claim must be made within the time and in the manner prescribed in the compromise agreement. Any such compromised claim is not settled until the full payment of the compromised amount has been made within the time and in the manner prescribed.

(ii) *Failure to pay the compromised amount.* Failure of any debtor to make payment as provided in the compromise agreement will have the effect of reinstating the full amount of the original claim, less any amounts paid prior to the default.

(9) *Effect of compromise, or suspension or termination of collection action.* Any action taken under this section regarding the compromise of a federal claim, or suspension or termination of collection action on a federal claim is not an initial determination for purpose of the appeal procedures of § 199.16 of this part.

(i) *Referrals for Collection*—(1) *Prompt referral.* Federal claims on which collection action has been taken in accordance with the provisions of this section and which cannot be collected or compromised or on which collection action cannot be suspended or terminated, as provided herein, will be referred by the Director, OCHAMPUS, or a designee, for collecton as provided in the joint Federal Claims Collection Standards Issued by the General Accounting Office and the Department

of Justice. Such referrals will be made as early as possible consistent with aggressive collection action by CHAMPUS fiscal intermediaries and OCHAMPUS and well within the statute of limitations.

(2) *Report of prior collection actions.* The Director, OCHAMPUS, or a designee, will prepare a report of prior collection actions for each case referred for collection under the provisions of this section. This report will include, as a minimum, the following:

(i) Reasonable current credit data or other adequate assurance indicating that there is a reasonable prospect of effecting enforced collections from the debtor. Such credit data may take the form of a commercial credit report, an agency investigative report, an individual debtor's own sworn financial statement executed under penalty of perjury or an audited balance sheet of a corporate or other business entity.

(ii) A brief summary of the actions previously taken to collect or compromise the claim.

(3) *Preservation of evidence.* The Director, OCHAMPUS, or a designee, will take such action as is necessary to insure that all files, records and exhibits on claims referred hereunder are preserved.

(j) *Claims Involving Indications of Fraud, Filing of False Claims or Misrepresentation.* Any case in which there is an indication of fraud, filing of false claims or misrepresentation will be promptly referred to the Director, OCHAMPUS, or a designee, for processing. The Director, OCHAMPUS, or a designee, will investigate and evaluate the case and either refer the case to the appropriate investigative law enforcement agency or return the claim for other appropriate administrative action, including collection action under this section. Payment on all CHAMPUS beneficiary or provider claims in which fraud, filing false claims or misrepresentation is suspected will be suspended until payment or denial of the claim is authorized by the Director, OCHAMPUS, or a designee. Collection action on all federal claims in which a suspicion of fraud, misrepresentation or filing false claims arises will be suspended pending referral to the appropriate law enforcement agencies by the Director, OCHAMPUS, or a designee. Only the Department of Justice has authority to compromise or terminate collection action on such claims.

(10 U.S.C. 1079, 1086; 5 U.S.C. 301)

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

October 3, 1983.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD 78-151]

Inland Waterways Navigation Regulations; Connecting Waters From Lake Huron to Lake Erie

AGENCY: Coast Guard, DOT.

ACTION: Notice of hearing on a proposed rule and extension of comment period.

SUMMARY: On June 6, 1983, the Coast Guard published proposed rules (48 FR 25231) that would amend the existing inland waterways navigation regulations for the connecting waters from Lake Huron to Lake Eire. The purpose of the action is to modernize and simplify the requirements, and make them compatible with the requirements of the Canadian Coast Guard in the Canadian portion of the waterway. The Coast Guard received a number of comments concerning the proposed rule, including one which requested a public hearing. In view of this, the Coast Guard will hold a public hearing in Detroit, Michigan. In addition, the Coast Guard will extend the comment period beyond the date of the public hearing.

DATES: The public hearing will be held on November 15, 1983. The hearing will begin at 10:00 a.m. and end at 4:00 p.m. Comments must be received on or before November 30, 1983.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/44), U.S. Coast Guard, Washington, D.C. 20593. Comments may be delivered to and will be available for inspection or copying between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday at the Marine Safety Council (G-CMC/44), Room 4402, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593. The public hearing will be held at the following location: Westin Hotel, Renaissance Center, Detroit, Michigan, 48243 in the Richard B. room.

FOR FURTHER INFORMATION CONTACT: Mr. Edward J. LaRue, Jr., (202) 426-4958.

SUPPLEMENTARY INFORMATION: Comments received to date have dealt mainly with the communication, traffic, and speed rules in the proposed regulations. The Coast Guard will accept further comments on all provisions of the rulemaking. In addition, because the subject of alternative radiotelephone channels has been raised in the comments, and to take full advantage of the public hearing, the Coast Guard will accept comments on radiotelephone communications in general on the Great Lakes.

Dated: September 30, 1983.

R. L. Brown,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc. 83-27362 Filed 10-6-83; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[WH-FRL 2435-7]

Ocean Dumping; Proposed Designation of Site; Gulf of Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate the existing dredged material disposal site located in the Gulf of Mexico offshore of Galveston Harbor as an EPA approved ocean dumping site for the dumping of dredged material. This action is necessary to provide an ocean dumping site for the current and future disposal of this material.

DATE: Comments must be received on or before November 21, 1983.

ADDRESSES: Send comments to: Mr. T. A. Wastler, Chief, Marine Protection Branch (WH-585), EPA, Washington, DC 20460.

The Environmental Impact Statement (EIS) is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2404 (rear), 401 M Street Southwest, Washington, DC

EPA Region VI, 1201 Elm Street, Dallas, Texas

U.S. Army Corps of Engineers Library, Galveston District, 400 Barracuda, Galveston, Texas

FOR FURTHER INFORMATION CONTACT: Mr. T. A. Wastler, 202/755-0356.

SUPPLEMENTARY INFORMATION: Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. (hereafter "the Act"), gives the

Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On September 19, 1980, the Administrator delegated the authority to designate ocean dumping sites to the Assistant Administrator for Water and Waste Management, now the Assistant Administrator for Water. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.) and was last extended on February 7, 1983 (48 FR 5557 et seq.). That list established this site as an interim site.

The purpose of this notice is to provide the public with an opportunity to comment on the proposed final designation, as an EPA Approved Ocean Dumping Site, of a site in the Gulf of Mexico offshore of Galveston Harbor for the continuing disposal of dredged material.

The location of the dredged material disposal site is approximately 3.7 nautical miles southeast of Galveston Island, positioned approximately in a rectangle with coordinates as follows:

29° 18' 00" N., 94° 39' 30" W.; 29° 15' 54" N., 94° 37' 06" W.; 29° 14' 24" N., 94° 38' 42" W., 29° 16' 54" N., 94° 41' 30" W.

The site occupies an area of approximately 6.6 square nautical miles. Water depths within this area range from 10 to 15.5 meters. This site has been used for dredged material disposal since at least 1931. The average annual disposal rate since 1958 has been less than 2 million cubic yards.

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., ("NEPA") requires that Federal agencies prepare an EIS on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision-making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. 39 FR 16186.

EPA has prepared a draft and final EIS entitled "Environmental Impact Statement (EIS) for the Galveston, Texas Dredged Material Disposal Site Designation." On July 30, 1982, a notice of availability of the draft EIS for public review and comment was published in the **Federal Register** (47 FR 33001). The public comment period on his draft EIS closed September 13, 1982. On November 26, 1982, a notice of availability of the final EIS for public review and comment was published in the **Federal Register** (47 FR 53477). The public comment period on the final EIS closed December 27, 1982. No additional comments were received.

The EIS evaluated ocean alternatives to the continued use of the Galveston dredged material disposal site. There alternatives include no action and three general ocean environments off Galveston which were considered as potentially suitable areas in which to locate an ocean disposal site: the shallow-water area, including the proposed site, the mid-shelf area, where no specific site was located, and the deepwater area more than 90 nautical miles southwest of Galveston.

The alternatives are each within separate major marine environments off Galveston. The shallow-water area (including the proposed site) is a high-energy environment heavily influenced by wave action, coastal or nearshore processes, agricultural runoff, and storms. The deepwater and mid-shelf areas are low-energy environments influenced primarily by offshore and shelf currents.

Appendix A of the draft EIS evaluated and compared the environmental and economic characteristics of the three areas using the ocean dumping site selection criteria. Some of the more important of these criteria in relation to the three potentially suitable disposal areas are discussed below.

Location in relation to breeding, spawning, nursery, feeding or passage areas of living resources in adult or juvenile phases.

The entire shelf region supports valuable commercial fish and shrimp fisheries. Areas off the shelf support a relatively insignificant commercial fishery. The proposed site is in the vicinity of Galveston Bay, an important nursery area for a number of commercially important species of fish and shrimp. These species are typical of nearshore western Gulf waters; therefore, the proposed site represents only a small portion of their geographic range.

The mid-shelf area supports valuable commercial fish and shrimp fisheries. The brown shrimp grounds and several offshore banks that represent valuable fishery resources areas exist there.

The deepwater area may be a feeding area for oceanic fish. However, there are no well-defined migratory pathways in the area. This area was selected in order to avoid shallow-water habitats of valuable shellfish and finfish.

Location in relation to beaches and other amenity areas.

The proposed site is about 3.7 nautical miles southeast of the nearest land, Galveston Island. Prevailing southwesterly bottom currents carry the dumped material away from Galveston and the local beaches. The disposal of dredged material will not have a significant adverse impact on free-swimming finfish and shellfish of the area.

The mid-shelf and deepwater areas are located more than 20 nautical miles and 53 nautical miles respectively from the nearest land. Therefore, disposal would have no significant adverse impact on beaches and other coastal and nearshore amenities.

Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.

Prevailing bottom currents at the proposed site flow south and southwest under normal conditions. Shoaling caused by disposal of dredged material in the high-energy shallow water area is not expected to be a concern. Temporary mounds form, but little evidence exists of significant long-term accumulation or mounding of material deposited at the proposed site.

The effects of disposal at mid-shelf sites have not been extensively studied because the mid-shelf region does not contain many disposal sites, and few studies have been undertaken with respect to the fate of dredged material deposited on the open shelf. However, existing information indicates most material falls to the bottom immediately after disposal. Although there is some turbidity of short duration, the material is dispersed over a wide area. Current direction is generally in a southwesterly direction.

Shoaling is less likely to occur in deep water than shallow water due to spreading and dispersion of the sediment as particles settle to the bottom.

For a more complete discussion of the ocean dumping site selection criteria considered, interested persons should examine pages A–7 through A–24 of the EIS. The summary contained in Appendix A recommends that the interim (proposed) site be designated for continuing use. This recommendation is based on several factors. The proposed site has received material dredged from the Galveston Bay Channel System since at least 1931. Past studies which are cited in the EIS have not discerned any significant adverse impacts from

disposal at the proposed site and have determined that this is a high-energy erosional zone which can generally accept large volumes of dredged material with little apparent net change to the bottom.

Active oil and gas exploration and drilling occur in the mid-shelf area off Galveston. Fixed structures, such as platforms, and the supply vessels servicing them, would present navigational hazards to the hopper dredges used in channel maintenance. In addition, disposal at a mid-depth site would be more likely to have a long-term effect on the benthos than would disposal at a shallow-water site.

The primary reason against recommending designation of a deepwater site is transportation costs. It is estimated that dredging costs would increase 279 to 298 percent if the disposal area were changed to that location.

The final EIS includes the Agency's assessment of the four comments received during the comment period on the draft EIS. Comments correcting facts presented in the draft EIS were incorporated in the text and the changes noted in the final EIS. Specific comments which could not be appropriately treated as text changes were responded to point by point in the final EIS, following the letters of comment.

Based on the information reported in the EIS, EPA proposes to designate the existing Galveston site for continuing use for the ocean disposal of dredged material where the applicant has demonstrated compliance with EPA's ocean dumping criteria. The EIS is available for inspection at the addresses given above.

The designation of the existing Galveston dredged material disposal site as an EPA Approved Ocean Dumping Site is being published as proposed rulemaking. Management authority of this site will be delegated to the Regional Administrator of EPA Region VI. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. If a Federal project is involved, the Corps must evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this proposal does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this proposed rule does not necessitate preparation of a Regulatory Impact Analysis.

This proposed rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

This proposed rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Authority: 33 U.S.C. Sections 1412 and 1418.

Dated: September 27, 1983.

Tudor Davies, Jr.,

Acting Assistant Administrator for Water.

PART 228—[AMENDED]

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended by removing paragraph (D), the Galveston Dredged Material Disposal Site, from paragraph (a)(1)(i) of § 228.12 and adding to § 228.12(b) an ocean dumping site for Region VI. Section 228.12 is amended by adding a paragraph (6)(20) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(20) Galveston Dredged Material Site—Region VI

Location: 29d, 18' 00"N., 94d 39' eo"W., 29d 15' 54"N., 94d 37' 06"W.; 29d 14' 24"N., 94d 38' 42"W.; 29d 16' 54"N., 94d 41' 30"W.

Size: 6.6 square nautical miles.

Depth: Ranges from 10 to 15.5 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the Galveston, Texas, area.

[FR Doc. 83-27390 Filed 10-6-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 508

[Docket No. 83-45]

Actions To Adjust or Meet Conditions Unfavorable To Shipping in the United States/Republic of the Philippines Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission, in response to alleged unfavorable conditions in the foreign oceanborne trades between the United States and the Republic of the Philippines, proposed rules suspending the tariffs of Philippine carriers in those trades or, alternatively, barring access of Philippine carriers to United States ports and cargoes unless these carriers obtain authorization from the United States Government. Should unfavorable conditions be found to exist, the effect of the proposed rules would be to adjust or meet those conditions by imposing burdens on Philippine flag carriers equal to those imposed on non-Philippine carriers by Philippine laws and regulatons.

DATE: Comments on or before December 5, 1983 (original and 15 copies).

ADDRESS: Send comments to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of section 19(1)(b), Merchant Marine Act, 1920, (46 U.S.C. 876), as implemented by Commission General Order No. 33 (46 CFR Part 506), the Federal Maritime Commission (hereinafter referred to as the Commission) is authorized and directed to make rules and regulations affecting shipping in the foreign trade of the United States in order to adjust or meet

general or special conditions unfavorable to shipping in the foreign trade of the United States and which arise out of, or result from, foreign laws, rules or regulations, or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

The types of conditions which the Commission generally presumes to be unfavorable to shipping in the foreign trade of the United States are set forth in 46 CFR 506.3. Among these are conditions which: (1) Preclude or tend to preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel; (2) reserve substantial cargoes to the national flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States; and (3) are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors (46 CFR 506.3 (a), (b) and (d)).

The Commission has received numerous complaints from U.S. shippers and exporters regarding conditions in the U.S./Philippines trades. Other shipper complaints concerning these trades have been forwarded to the Commission by the U.S. Department of State. In addition, some comments filed by third flag carriers and others in connection with a proposed equal access agreement between U.S. and Philippine flag carriers (Agreement No. 10461) cited certain potential adverse conditions in these trades. These persons contend that actions taken by the Government of the Republic of the Philippines (R.O.P.) have created actual or potential unfavorable conditions. Recent communications allege a worsening of conditions, particularly in the U.S. export trade with the Philippines. Although the Commission has not received a formal petition for rulemaking under section 19, a number of these persons request that the Commission, on its own motion, take action under section 19 to remedy the alleged unfavorable trade conditions.

These complaints arise out of the enactment, implementation and enforcement by the Philippine Government of a comprehensive cargo sharing regime. Presidential Decree No. 1466 (P.D. 1466), issued on June 11, 1978, reserves all Philippine Government cargo for transport by Philippine flag carriers. Government cargo is defined as that cargo which is sold, purchased, financed or guaranteed by the Philippine Government. The requirement for transport of government cargo by Philippine flag carriers may be waived for a number of reasons including reciprocal treatment by the government of the bilateral trading partner and unavailability of a Philippine flag vessel at "reasonable freight rates" or within a "reasonable period of time." Recently, the Philippine Government has taken actions which impose a cargo sharing regime on all liner cargo not covered by P.D. 1466.

On January 19, 1982, the Philippine Government promulgated Executive Order No. 769, *Concerning the Shipment of Sea-Borne Import and Export Cargoes of the Philippines*, which reserves 80 percent of all non-government cargo in the Philippine export and import liner cargo trade for flag carriers of the Philippines and that of the bilateral partner. Such cargo is to be shared equally by the bilateral trading partners. Cross traders may compete for the remaining unreserved cargo. Executive Order No. 769 further empowers the Maritime Industry Authority (MARINA) to issue rules and regulations to implement this 40–40–20 formula. Other Philippine Government agencies, including the Central Bank of the Philippines, are also directed to implement Executive Order No. 769.

On June 1, 1982, MARINA published general rules and regulations implementing Executive Order No. 769. The rules establish a comprehensive regulatory mechanism governing both the Philippine export and import trades. Section 2 requires ocean carriers serving Philippine ports to provide information concerning freight rates and other conditions of carriage.

Section 5 authorizes MARINA to require that carriers providing service from foreign countries to Philippine ports notify MARINA of any general rate increase at least 150 days prior to its effective date. Section 7 provides that MARINA be given at least 15 days notice of any supplements to rates. Section 8 gives MARINA the power to nullify provisions of any liner transport agreement which contravenes certain obligations under the rules. Section 9 provides that in the event a liner transport agreement is nullified the previously effective rates will apply. Section 11 authorizes MARINA to prohibit the charging of rates, whether higher or lower, which it determines may seriously disturb ocean transportation. Section 12 confers broad authority upon MARINA to set cargo sharing rules for the trade from any specific country to Philippine ports. It authorizes MARINA to determine a maximum or minimum number of sailings, a maximum or minimum capacity for each ship participating in the specified trade, and the type of ship to be used for each line participating in the specified trade. Sections 16 through 25 authorize MARINA to require vessels serving Philippine ports to obtain a license. Such a license may be granted subject to certain conditions regarding number of sailings, vessel capacity, type of ship to be used, and rates to be charged. Sections 26 through 28 set forth rules regarding foreign laws and regulations. Subject to certain exceptions, these rules declare that there shall be no compliance with measures or decisions of a foreign state concerning ocean transportation to or from the Philippines with regard to pricing, conditions of carriage, number of sailings, vessel capacity or cargo sharing. Section 48 provides that MARINA may impose sanctions and administrative fines not to exceed the cost of freight covered by a particular violation.

On July 22, 1982, MARINA put into effect Memorandum Order No. 3 containing special rules which apply exclusively to export and import cargoes in the U.S./Philippine trades. Section 4 of Memorandum Order No. 3 contemplates the formation of a pooling agreement to fulfill the 40–40 bilateral shares. Section 5 provides that the requirement on the use of Philippine and U.S. flag carriers may be waived, upon written request, where service of a Philippine or U.S. flag carrier is not available (1) at "reasonable freight rates" or (2) within a "reasonable period of time". "Reasonable freight rates" are determined by comparison with the prevailing rate in the trade and with the prevailing rate offered by shipping lines in similar distance trade routes in the region. "Reasonable period of time" means that a national flag vessel will be available within eight days from scheduled date of loading. Section 6 authorizes MARINA to gather information in order to monitor compliance with the 40–40–20 cargo sharing formula. Section 9 incorporates by reference the MARINA rules implementing Executive Order No. 769.

On October 8, 1982, the Central Bank of the Philippines issued a memorandum containing rules and regulations which apply only to import liner cargo exported from the United States to the Philippines not covered by P.D. 1466. Section 1 of the Central Bank Memorandum defines liner cargo as "cargo to be loaded or loaded [sic] on regularly scheduled common carriers." Section 3 provides that the 40–40 bilateral shares of the Philippines and

the United States should first be filled during the year. Section 4 provides that waivers may be obtained from MARINA or from the nearest Philippine consulate in the United States when national flag service is not available at reasonable freight rates or within a reasonable time. Section 5 requires all letters of credit covering liner cargoes from the United States to state that the cargo is to be shipped through national flag vessels of the Philippines or the United States, unless the prescribed waiver is secured. Section 6 provides that in the case of importations under "documents against acceptance" or "open account" arrangements, the importer shall instruct the exporter/shipper that shipment shall be effected through Philippine or U.S. flag vessels unless the prescribed waiver is secured. Section 7 states that import liner cargo from the United States which is not shipped through Philippine or U.S. flag vessels shall not be issued release certificates unless the prescribed waiver is secured. Section 8 provides for sanctions in accordance with Rule XII of the regulations implementing Executive Order No. 769.

Shippers and exporters contend that the Philippine Government recently has required a stricter adherence to its waiver regulation and may be applying the penalty provision which would subject a carrier which offloads cargo from the U.S. in the Philippines without a waiver to a fine equal to the freight rate. Some shippers state that they have experienced delays and other difficulties in obtaining a waiver. One shipper alleges that he was informed that waivers would no longer be available at the port of New York. Another shipper indicated that availability of a lower freight rate is not accepted as a valid reason for granting a waiver.

These shippers and exporters assert that these governmental actions to enforce the cargo sharing formula through a system of waivers has already had a deleterious effect on the export trade. Shippers allege that enforcement of the waiver system has affected the routing of cargo and reduced the quality of service. One shipper complained that Philippine carriers do not have the capability to offer needed intermodal service and that no Philippine flag service is available at the most convenient port. The unavailability of service at certain ports allegedly increases inland shipping charges. Shippers also complain that Philippine regulations deprive them of the services of non-conference third flag carriers, forcing them to pay the higher conference rates. Shippers complain that Philippine regulations have disrupted long-standing commercial relationships, imposed bureaucratic delays, and resulted in higher costs—all of which have eroded the ability of U.S. exporters to compete in the international marketplace. One shipper alleges that the Philippine laws have already resulted in a loss of exports. Finally, shippers state that their foreign competitors are not burdened by the same restrictions.

The Commission has also received comment on the potential impact of the Philippine cargo reservation laws and regulations on third flag carriers. Comments filed in connection with Agreement No. 10461 express concern by third flag carriers that full implementation of the Philippine cargo reservation law would result in loss of cargo and revenues, as all third flag carriers serving the trade would be restricted to an aggregate 20 percent share. These carriers point out that the definition of government preference cargo is so expansive as to potentially embrace all of the cargo in the trade. Moreover, these carriers note that under the Central Bank rules, they may not begin to carry their 20 percent share in a given year until national flag lines have achieved their 80 percent quota. This allegedly leaves third flag carriers in a commercially unfeasible position. These carriers further point out that at the present time Philippine laws appear to be implemented only in the U.S./Philippines trades. Moreover, they note that U.S. flag carriers have been granted automatic waivers while third flag carriers must comply with the regulations. They also point out that in certain port ranges, i.e. Atlantic Coast ports, third flag operators provide the vast majority of sailings. The effect of implementation may therefore be immediately to restrict service and ultimately to close the trade to third flag carriers.

One comment filed in connection with Agreement No. 10461 by a freight forwarded alleges other deleterious effects associated with the Philippine waiver system. According to the forwarder, Philippine flag vessels are in some instances being positioned so as to eliminate the possibility of satisfying the "reasonable time period" requirement for the granting of a waiver. The forwarder alleges that the eight day availability clause makes it impossible for another flag line to be used. This forwarder also alleges that applications for waivers are first reviewed by a representative of the Maritime Company of the Philippines before being considered by the Philippines Consulate for formal approval. This representative attests to the availability or non-availability of a Philippine flag vessel within the specific period. According to the forwarder, the recommendation of the Maritime Company agent is always adopted by the Consulate. The eight day availability requirement allegedly causes unnecessary delays in shipment which result in loss of interest, unnecessary backlogs in exporter warehouses, and increased warehousing costs. The waiver system means that those shippers who use a letter of credit are impeded from receiving funds due when cargo cannot be shipped as soon as it is ready.

On the basis of the information available at this time, the Commission has reason to believe that unfavorable conditions may exist in the foreign oceanborne trades between the United States and the Republic of the Philippines. The combined effect of the various Philippine cargo preference measures is to impose a comprehensive network of restrictions on the foreign oceanborne commerce of the United States. As we have noted recently in our analysis of trade conditions in the U.S./Venezuelan trades, we do not question the sovereign right of a foreign government to impose conditions on its own domestic commerce.[1] Many nations, including the United States, have legitimate interests in promoting the economic well-being of their maritime commerce. However, it is not reasonable to expect the export commerce of the United States to bear the burden of the economic costs of the carrier promotion policies of the Republic of the Philippines. The record available to us at this time indicates that the Philippine Government, without consultation with or consent by the United States, has imposed restrictions on the movement of United States origin goods to that country—restrictions which have not been imposed by the United States on Philippine exports to this country. Moreover, the laws and regulations promulgated by the Philippine Government represent an attempt to impose unilaterally a strict 40–40–20 cargo sharing formula on the trade of the United States. Executive Order No. 769 explicitly states that its purpose is to carry out the cargo sharing formula of the UNCTAD Liner Code. The United States Government has rejected the UNCTAD Liner Code as contrary to the trade policies of the United States. United States policy

[1] *See* Docket No. 82–58, *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade*, Interim Report on Current Status of Proceeding, February 25, 1983, pp. 5–6.

opposes the imposition of such cargo reservation formulas upon its foreign trade.

Subsequent actions of the Philippine Government in implementing Executive Order No. 769 are aimed solely at the trade with the United States. The burden of these regulations, particularly the waiver provision, is not imposed on other foreign countries trading with the Philippines. Such a regulatory regime would appear to disadvantage U.S. shippers and exporters competing with those in other countries. The eight-day availability requirement for a waiver is imposed upon shipments from U.S. ports. Complaining shippers have alleged that exports from the Philippines are not burdened by this eight day delay. Finally, the Central Bank Memorandum applies only to shipments from the United States. Failure to comply with the Central Bank regulations may result in heavy fines being imposed on U.S. export shipments. Similar restrictions are not applied to shipments from the Philippines.

The complaints received from shippers and exporters indicate that the deleterious effects of these laws and regulations may already be felt in U.S. export trade. Shippers and exporters may be deprived of their right to select a carrier of their choice, prevented from obtaining specialized transportation services such as intermodal service, forced to pay higher freight rates and bear other unnecessary costs, handicapped by delay, and impaired in their ability to compete with foreign companies.

If the conditions described by shippers, third-flag carriers and others were to be established by probative evidence, then such conditions could be found to be unfavorable under sections 506.3 (a), (b) and (d) (46 CFR 506.3 (a), (b) and (d)). As a direct result of Philippine cargo reservation laws and regulations, conditions may exist which: (1) Preclude or tend to preclude non-Philippine flag carriers from competing in the trade on the same basis as any other carrier; (2) fail to provide, on reasonable terms, for effective and equal access to cargo by carriers serving the trade; and (3) discriminate against U.S. shippers and exporters by hindering their ability to compete in international markets. No such restrictions or unfavorable conditions have been imposed by the United States on Philippine flag carriers.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920 and the Commission's General Order No. 33, this agency will initiate, on its own motion, a rulemaking proceeding for the purpose of: (1) Determining whether, in fact, unfavorable conditions exist in the foreign oceanborne trade between the United States and the Republic of the Philippines; and (2) if such conditions are found to exist, fashioning an appropriate remedy. In the interest of providing the Commission with the most complete information available, interested parties are encouraged to comment on the accompanying proposed regulation. All factual assertions should be attested to and accompanied by supporting documentation where possible.

The accompanying proposed rule states two alternative remedies should unfavorable conditions be found to exist: (1) Suspension of the tariffs of Philippine carriers in the affected trades; or (2) restriction of access of Philippine carriers to United States ports and cargoes except with the authorization of the United States Government. Comments on the relative merits of these proposed alternatives is invited. Although these proposed rules deal only with the export trade, the Commission also invites comments on the possibility that tariffs covering transportation from the Philippines to the United States trade may also be suspended.

Interested parties are given until December 5, 1983 to file comments on the proposed rule. Factual submissions relating to conditions in the United States/Philippines trade, where relevant, should inlcude statistics showing present or prospective cargo loss, loss of customers, reduction in sailings or other impact on service, reduction in volume of exports, impact on freight rates, and costs incurred through delay in shipment. To the extent possible, such factual submissions should be supported by sworn documents and affidavits.

List of Subjects in 46 CFR Part 508

Maritime carriers, Tariffs.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920 (46 U.S.C. 876(1)(b)), Reorganization Plan No. 7 of 1961 (75 Stat. 840), and Commission General Order No. 33 (46 CFR Part 506) it is proposed to add a Part 508 to 46 CFR to read as follows:

PART 508—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE UNITED STATES/PHILIPPINES TRADE

§ 508.1 Conditions unfavorable to shipping in the foreign trade with the Philippines.

The Federal Maritime Commission has determined that the Government of the Republic of the Philippines has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably restrict vessels of non-Philippine flag registry from competing in the ocean trade between the United States and the Philippines on the same basis as Philippine carriers, and additionally deny effective and equal access to cargoes in the trade. Moreover, the laws and regulations at issue unilaterally allocate and reserve export liner cargoes from the United States for carriage by Philippine flag vessels. Philippine regulations provide for a waiver system whereby non-Philippine and non-U.S. flag vessels may carry reserved cargo in the event of nonavailability of vessels. The enforcement of the waiver system and its accompanying penalties and fines discriminates against U.S. shippers and exporters, restricts their opportunities to select a carrier of their own choice, and hampers their ability to compete in international markets, thus resulting in further conditions unfavorable to the foreign trade of the United States.

§ 508.2 [Option A] Tariffs of Philippine flag carriers suspended.

(a) On a date 30 days from the issuance of a final rule, the following tariffs and all amendments thereto, insofar as they relate to the trade from the United States to the Republic of the Philippines, are suspended in full:

(1) National Galleon Shipping Corporation.

Tariff FMC 72 From U.S. Atlantic, Gulf and Pacific Coast Ports and Ports in Canada to Ports in Indonesia and Malaysia (Tariff filed under the name of Galleon Shipping Corporation)

Tariff FMC 75 From United States Atlantic and Gulf Ports to Worldwide Ports

Tariff FMC 79 From U.S. Atlantic and Gulf Ports to Ports in Philippines, Taiwan, Hong Kong, Korea, Japan and Peoples Republic of China

Tariff FMC 81 From U.S. Pacific Coasts Ports, Overland Common Points and Interior Points to Ports in the Republic of the Philippines, Hong Kong, Taiwan, Korea

Tariff FMC 84 From Interior Points in the United States to Ports in the Far East

(2) Maritime Company of the Philippines.

Tariff FMC 20 Between Ports in Hawaii and Ports in the Far East

Tariff FMC 23 From Pacific Coast Ports and OCP Points in the United States to Ports in the Republic of the Philippines, Taiwan and Other Ports

Tariff FMC 24 Between United States Atlantic, Gulf and Great Lakes and Ports Worldwide

(b) Tariffs which may be filed by or on behalf of the carriers mentioned in paragraph (a) of this section in the ocean trade from the United States to the Philippines shall also be suspended.

(c) Moreover, all affected conference or rate agreement tariffs shall be amended to reflect the suspensions enumerated in paragraph (a) of this section. Operation by any carrier under suspended, cancelled or rejected tariffs shall subject said carriers to all applicable remedies and penalties provided by law.

§ 508.2 [Option B] Philippine flag carriers without "authorized" status—suspension of tariffs.

(a) On a date 30 days from the issuance of a final rule, the following tariffs and all amendments thereto, insofar as they relate to the trade from the United States to the Philippines, shall be suspended in full, unless the enumerated Philippine flag carriers first obtain "authorized" status pursuant to paragraph (b) of this section:

(1) National Galleon Shipping Corporation.

Tariff FMC 72 From U.S. Atlantic, Gulf and Pacific Coast Ports and Ports in Canada to Ports in Indonesia and Malaysia (Tariff filed under the name of Galleon Shipping Corporation)

Tariff FMC 75 From United States Atlantic and Gulf Ports to Worldwide Ports

Tariff FMC 79 From U.S. Atlantic and Gulf Ports to Ports in Philippines, Taiwan, Hong Kong, Korea, Japan and Peoples Republic of China

Tariff FMC 81 From U.S. Pacific Coast Ports, Overland Common Points and Interior Points to Ports in the Republic of the Philippines, Hong Kong, Taiwan, Korea

Tariff FMC 84 From Interior Points in the United States to Ports in the Far East

2. Maritime Company of the Philippines.

Tariff FMC 20 Between Ports in Hawaii and Ports in the Far East

Tariff FMC 23 From Pacific Coast Ports and OCP Points in the United States to ports in the Republic of the Philippines, Taiwan and Other Ports

Tariff FMC 24 Between United States Atlantic, Gulf and Great Lakes and Ports Worldwide

Tariffs which may be filed by or on behalf of the above-mentioned carriers in the ocean trade from the United States to the Philippines shall also be suspended if the conditions of paragraph (b) of this section are not met. In the event of suspension of tariffs pursuant to this paragraph, all affected conference or rate agreement tariffs shall be amended to reflect said suspensions. Operation by any carrier under suspended, cancelled or rejected tariffs shall subject said carrier to all applicable remedies and penalties provided by law.

(b) In order to avoid suspension of its tariffs pursuant to paragraph (a) of this section, each Philippine flag carrier enumerated in paragraph (a) of this section must secure the "authorized" status from the Federal Maritime Commission prior to the effective date of this rule. "Authorized" status shall be conferred upon a Philippine flag carrier only upon the carrier's submission to the Commission of a certificate from the government of the Philippines stating unequivocally that no law, regulation or practice of the Government of the Philippines will (1) preclude or tend to preclude vessels of U.S. or third flag registry from competing in the United States/Philippines ocean trade on the same basis as any other vessel; (2) result in less than effective and equal access by U.S. flag and third flag carriers to cargo designated as reserved under Executive Order No. 769; or (3) otherwise discriminate against U.S. shippers, exporters or importers.

(c) Upon conferment of "authorized" status, it shall be the Commission's practice to obtain periodic reports containing carriage statistics in the United States/Philippines ocean trade in order to monitor the conditions in the trade.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-27250 Filed 10-6-83; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 30906-184]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule prescribing 1984 and 1985 limits for the salmon prohibited species catch in the Bering Sea and Aleutian Islands area foreign trawl fishery. These limits are proposed under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) and are intended to reduce the incidental catch and unnecessary mortality of salmon in foreign groundfish operations while still allowing the foreign fisheries an opportunity to harvest their groundfish allocations.

DATE: Comments on the proposed salmon catch limits are invited until November 4, 1983.

ADDRESSES: Comments should be addressed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802. Copies of the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) prepared for Amendment 3 to the FMP, which addresses this regulatory change, may be obtained by contacting the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510, 907-274-4563.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson (Regional Plan Coordinator), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The FMP was developed by the North Pacific Fishery Management Council (Council) and is implemented by rules appearing at 50 CFR 611.93. Eight amendments to the FMP have been adopted by the Council under authority of the Magnuson Fishery Conservation and Magnuson Act (Magnuson Act). One of those amendments (Amendment 3) was implemented July 4, 1983 (48 FR 24719), and established a five-year (1982-1986) schedule for reduction of prohibited species catch (PSC) limits for salmon, Pacific halibut, king crab, and Tanner crab in the foreign trawl fishery. The annual PSCs established for these species are apportioned to foreign nations in proportion to each nation's groundfish allocation. When U.S. observer information, or other reported statistics that are considered reliable, indicate that trawl vessels of a particular nation have caught incidentally that nation's specified portion of the PSC for one of the above species, those vessels will be subject to a significant time-area closure in order to reduce or eliminate further taking of that species in the Bering Sea and Aleutian Islands area. The preamble to the proposed rule for Amendment 3 (48 FR 10383; March 11, 1983) thoroughly discussed the need and justification for the amendment; it also discussed the

procedure for apportionment of PSCs to foreign nations, considerations for adjustments of PSCs, exemptions to PSC regulations, and additional incentives to reduce the catch of prohibited species in foreign groundfish fisheries.

The rule implementing Amendment 3 indicated salmon PSC figures only for 1981 [1] 1982, and 1983, with the objective of achieving a 75 percent reduction from the 1981 salmon PSC level by 1986. A complete review of the salmon PSC program was to be conducted by the Council in 1983 to determine further reductions in salmon PSC levels for 1984 and 1985 for purposes of achieving the 1986 PSC limit. The Council conducted such a review at its May 1983 meeting and adopted a salmon PSC limit of 38,441 fish for 1984 and a limit of 27,957 fish for 1985. The 1986 PSC limit was unchanged and remains at 17,473 fish. When conducting its review, the Council considered the status of the salmon resource, the evidence to date that a 75 percent reduction of the salmon PSC limit is attaintable and should not impede foreign groundfish operations, and the economic and technological reasonableness of the 75 percent reduction goal by 1986.

The salmon PSC figures adopted for 1984 and 1985 reflect salmon PSC levels that were negotiated between representatives for those western Alaska residents who depend on the salmon resource and the Japanese trawl industry, the principle harvester of Bering Sea groundfish. NOAA now proposes to implement the Council's 1984 and 1985 salmon PSC limits by inserting them into the reserved portions of Table 2 in 50 CFR 611.93.

Classification

The Alaska Regional Director of the National Marine Fisheries Service (Regional Director) has determined that this proposed rule is necessary and appropriate for conservation and management of fishery resources, and that it is consistent with the Magnuson Act and other applicable law. He has also determined that this rule will not have a significant impact on the quality of the human environment. The environmental impact statement (EIS) prepared on the original FMP also addressed Amendment 3 and consequently covered this action. The EIS was filed with the Environmental Protection Agency on November 20, 1981. Accordingly, neither a supplement to the EIS nor an environmental assessment is required. A copy of the EIS is available from the Council at the address listed above.

The Regional Director has further determined that approval and implementation of this rule will be carried out in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

The NOAA Administrator has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the analysis presented below and on the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) prepared by the Council for the rule implementing Amendment 3 to the FMP. You may obtain a copy of the RIR/FRFA from the Council at the address listed above.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities; therefore, no regulatory flexibility analysis is required under provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The RIR/FRFA prepared for Amendment 3 discuses the assumptions and methodology employed in estimating the discounted loss in gross earnings to domestic salmon fishermen caused by imposition of salmon PSC levels. Applications of these assumptions and methodologies to the salmon PSC levels now proposed indicate that they will result in direct and measurable losses to domestic salmon fishermen in subsequent seasons. The discounted present exvessel value of the loss to domesic salmon fishermen as a result of the 1984, 1985, and 1986 salmon PSCs are estimated to be $567,305, $412,584, and $257,863, respectively. These estimated losses compare very favorably with the discounted present value loss to domestic fishermen which would accrue *each* season absent the salmon PSC reduction schedule. That loss to domestic salmon fishermen, in discounted present value terms, was estimated to be approximately $1.19 million at the exvessel level, *per year.* The difference between this annual loss and each of the PSC schedule losses estimated for 1984–1986 constitute the savings attributable to the salmon PSC limits, or $622,695, $777,416, and $932,197, respectively. In 1982, $4,968 commercial salmon permits were fished in the western Alaska fisheries. Assuming the same number of permits continue to be fished, the savings that would accrue to each of these permit holders as a result of the 1984–1986 salmon PSC limits would approximate only $125, $156, and $188, respectively. These values assume only a commercial exploitation of western Alaska salmon.

These gross exvessel savings (benefits) are attainable without imposition of significant costs on the foreign fishery. That is, the salmon PSC limits are fully attainable without significant adverse impacts on the foreign fleets' ability to harvest their groundfish allocations. Therefore, the prescribed salmon PSC schedule allows full and complete achievement of the Council's expressed objectives for Amendment 3 and this action, as articulated in the RIR/FRFA prepared on the amendment.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: October 4, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 611—FOREIGN FISHING

For reasons set out in the preamble, 50 CFR Part 611 is proposed to be amended as follows:

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. In § 611.93(c)(2)(ii)(D), Table 2 is revised to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

TABLE 2.—TARGET REDUCTION SCHEDULE OF SALMON PROHIBITED SPECIES CATCHES BASED ON THE AVERAGE 1977–1980 FOREIGN TRAWL SALMON INCIDENTAL CATCH

Year	Total salmon[1]
Base numbers: 1977–80	80,000
Reduced catch levels:	
1981	69,893
1982	59,409
1983	48,925

[1] An amendment to the preliminary fishery management plan for the Trawl Fisheries and Herring Gillnet Fishery of the Eastern Bering Sea and Northeast Pacific (46 FR 60002, December 8, 1981) established a chinook salmon PSC of 65,000 fish.

TABLE 2.—TARGET REDUCTION SCHEDULE OF SALMON PROHIBITED SPECIES CATCHES BASED ON THE AVERAGE 1977–1980 FOREIGN TRAWL SALMON INCIDENTAL CATCH—Continued

Year	Total salmon[1]
1984	38,441
1985	27,957
1986	17,473

[1] Total salmon numbers are calculated on the assumption that 93 percent of the incidentally-caught salmon are chinook.

* * * * *

[FR Doc. 83-27462 Filed 10-5-83; 8:45 am]

50 CFR Part 611

[Docket No. 31004-196]

Foreign Fishing, Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement Amendment 6 to the fishery management plan for the groundfish fishery in the Bering Sea and Aleutian Islands area. This amendment would establish a domestic fishery development zone in the Bering Sea and would prohibit all foreign harvesting of groundfish in that zone. This action is intended to provide a sanctuary for U.S. fishing vessels in a productive fishing area of the Bering Sea and to encourage the expansion of the U.S. groundfish fishery.

DATE: Comments on the amendment, proposed rule, and environmental assessment are invited until November 18, 1983.

ADDRESS: Comments may be mailed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, or delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska. Individual copies of the amendment, the environmental assessment and the regulatory impact review/initial regulatory flexibility analysis may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510, telephone 907–274–4563.

FOR FURTHER INFORMATION CONTACT: Jeffrey Povolny (Groundfish Plan Coordinator, North Pacific Fishery Management Council), 907–274–4563.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) was implemented on January 1, 1982 (46 FR 63295, December 31, 1981), by the NOAA Assistant Administrator for Fisheries (Assistant Administrator) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Nine amendments to the FMP have been adopted by the North Pacific Fishery Management Council (Council). Five of these amendments have been implemented: Amendment 1a and 2 (47 FR 1295), Amendment 4 (48 FR 21336), Amendment 3 (48 FR 24719), and Amendment 7 (48 FR 34962).

Amendment 6 to the FMP is the subject of this action and was adopted by the Council on September 23, 1982. The amendment proposes the establishment of a domestic fishery development zone (FDZ) in the Bering Sea where only U.S. fishing vessels would be allowed to harvest groundfish. Because the FDZ is known to be a productive fishing area, its establishment would encourage the development of the U.S. groundfish industry.

The FDZ (Figure 1) is located just north and west of Unimak Pass and is bounded by straight lines joining the following coordinates:

55°16′ N. latitude, 166°10′ W. longitude (westernmost corner of Bristol Bay Pot Sanctuary),

54°00′ N. latitude, 166°10′ W. longitude (Unalga Island), and

54°35′ N. latitude, 164°55′42″ W. longitude (Cape Sarichef Light).

The FDZ covers approximately 2,342 square miles and includes the continental shelf just north and west of Unimak Pass. This is only about 0.4% of the total fishery conservation zone area (approximately 630,000 square miles) under the jurisdiction of the FMP.

The FDZ would be reserved for use by domestic fishing vessels—including those delivering to shore-based processors, U.S. catcher/processors, and foreign processing vessels involved in U.S. joint venture operations. All foreign harvest operations would be excluded year-round from the FDZ.

Development of a domestic groundfish fishery has been relatively slow in the Bering Sea and Aleutian Islands region. Yet this region has great potential for supporting a large domestic groundfish fishery. The present optimum yield (OY) of commercial groundfish species in the region is between 1.4–2.0 million metric tons (mt). Historically, most of the catch has been taken by foreign fisheries; only in the past two years has U.S. production exceeded 50,000 mt from the Bering Sea.

The FDZ proposed in Amendment 6 is a very productive fishing area in relatively close proximity to the only three developed harbors in the Bering Sea (Unalaska, Akutan and Sand Point) that have shore-based processing facilities. Over the past three years domestic fisheries for groundfish in the Bering Sea region (both shore-based and joint venture) have enjoyed some success. However, they are at a developmental stage and have difficulty competing effectively with foreign vessels on the same fishing ground at the same time because U.S. boats are generally much smaller than the foreign fishing vessels and are easily preempted from the fishing grounds. Creation of the FDZ will effectively remove a six-month-per-year foreign fishery from the zone, since the area is part of the Winter Halibut Savings Area, which is currently closed to foreign trawling from December 1 to May 31.

Foreign catches in the FDZ from 1977 to 1980 averaged 73,046 mt, or approximately 6% of the average 1977–80 foreign catch in the Bering Sea of 1,300,063 mt. In 1981 domestic joint venture catches from the FDZ were about 12,167 mt. In addition, a portion of the 1981 domestically processed catch of 8,851 mt came from the FDZ. In 1982 domestic joint venture catches from the FDZ were about 18,963 mt, in addition to a portion of the U.S.-processed catch of 20,863 mt. It is not possible to determine how much of this catch actually comes from the FDZ, but most of it is Pacific cod which has been relatively abundant in this area.

Developing U.S. groundfish fisheries, both JVP and DAP, are expected to benefit from the establishment of the FDZ in the following ways:

(1) Operating efficiency of domestic vessels would increase because they could operate without interference or conflict with foreign vessles in the same physical space for groundfish species;

(2) The proposed FDZ is within the most productive fishing area in the Bering Sea and Aleutian Islands area and domestic catch rates for pollock and Pacific cod in the FDZ should increase when foreign effort is removed. Such increases, however, would diminish as U.S. fishermen are attracted to the FDZ by higher returns and domestic effort in the zone increases;

(3) Costs of production to the U.S. groundfish industry would be reduced because of increased operating efficiency due to less crowding and improved groundfish catch rates; and

(4) The location of the FDZ is a logical choice due to its proximity to shoreside processing and support facilities, compared to equally productive areas further distant. This location complements the sanctuary for developing U.S. fisheries established south of Unimak Pass in the Gulf of Alaska, known as the Davidson Bank.

Classification

Section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub. L. 97-453, requires the Secretary of Commerce (Secretary) to publish proposed regulations within 30 days of his receipt of an amendment and regulations from a Council. At this time the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council has prepared an environmental assessment (EA) for Amendment 6 and has preliminarily concluded that no significant impact on the human environment would result if the amendment were implemented. You may obtain a copy of the environmental assessment from the Council at the address listed above; public comments are invited.

The NOAA Administrator has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291 (E.O. 12291), but that the proposed rule, if implemented, would have a significant beneficial effect on small entities within the meaning of the Regulatory Flexibility Act. These determinations were based upon the socioeconomic effects of the proposed rule as analyzed in the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) prepared by the Council. A summary of this analysis follows. A copy of the RIR/IRFA may be obtained from the Council at the address listed above.

If the proposed rule is implemented, the primary sources of benefits to domestic groundfish fishermen will be improvements in operating efficiency, or the amount of time a vessel spends fishing in a fixed season, and improved catch rates. Furthermore, the crowding problem in the FDZ due to competition between domestic and foreign vessels will be reduced with the removal of foreign effort.

While it was possible to estimate how a given improvement in operating efficiency (from reduced crowding) will benefit domestic fishermen, it was not possible to estimate how much domestic operating efficiency will improve with a reduction in foreign effort in the FDZ. Thus, it was not possible to provide a quantitative measure of this source of benefit.

The benefit to domestic fishermen of improved catch rates resulting from the removal of foreign effort from the FDZ is the reduced average cost of production for domestic fishing vessels, times tonnage landed. Under the methodology employed in the RIR/IRFA, these net benefits to U.S. pollock fishermen were conservatively estimated to range from $666,000 to $1,782,000. These benefits are viewed as short-term because an influx of domestic effort into the FDZ to supplant the expelled foreign effort will reduce marginal catch rates and the catch differential, until eventually an equilibrium of catch rates recurs and a redistribution of effort or new investment will serve to dissipate initial net benefits.

No information is available to infer what improved prospects (either in operating efficiency or catch rates) may result for Pacific cod fishermen from creation of the FDZ, since cod catches reported from that specific area are by-catches from foreign fleets targeting on pollock and from a limited U.S. joint venture operation targeting on Pacific cod in 1982. Benefits similar to those accruing to pollock operations may be expected to result to cod fishermen; if this proves to be the case, the net benefits presented above are low estimates.

Establishing the FDZ could affect the ability of shore-based processors to compete with at-sea processors. Most at-sea processing is provided now by foreign processing vessels in joint ventures with U.S. vessels fishing for pollock. U.S. shore-based processors are mainly receiving Pacific cod. If there were a shortage of catcher vessels, and active competition for their services, an increase in catch rates for pollock would make at-sea delivery relatively more attractive for harvesting vessels. Barring constraints on the daily quantities which a vessel can deliver, the increased catch rates would result in a larger increase in gross earnings to participants in joint ventures because more time can be spent fishing. Thus, this increase might force a shore-based processor to offer a higher price to his fishermen to compensate for the lower total catch which results, in part, from having to travel greater distances to deliver shoreside.

Currently, Competition for the services of catcher vessels is not intense, nor is it expected to be in the

near future because of the generally distressed state of Alaska's shellfish fisheries and the resulting attractiveness of the groundfish fisheries to U.S. crab and shrimp fishermen. Therefore, short-term increases in catch rates for pollock and cod resulting from the creation of the FDZ probably will not force shore-based processors to increase their price to attract deliveries of product. Nevertheless, the effects of a catch rate increase on the price offered by shore-based processors under conditions of excess demand for catcher vessels was examined as a worst-case scenario. This analysis showed that even in this remote circumstance, and (even less likely) if as much as 50 percent of the FDZ catch were purchased by shore-based processors, a net benefit of $298,000 would result.

Creation of the FDZ should not affect retail prices for consumers. The predicted increase in domestic groundfish catch as a result of the establishment of the FDZ represents less than one percent of the portion of world groundfish supply which comes from the Bering Sea. (Bering Sea groundfish catch represents about three percent of the world groundfish catch each year.) Therefore, no change in retail price is expected.

This proposed rule is exempt from the procedures of E.O. 12291 under Section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 97–453, require the Secretary to publish this proposed rule 30 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with the explanation of why it is not possible to follow procedures of the order.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. After review by the responsible State agencies under Section 307 of the Coastal Zone Management Act, the State of Alaska concurred in the Council's determination of consistency.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Dated: October 4, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 611 is proposed to be amended as follows:

PART 621—FOREIGN FISHING

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. In § 611.93 paragraph (c)(2)(ii)(C) is revised, (c)(2)(ii)(D) is redesignated as (c)(2)(ii)(E), and a new Figure 1 and new paragraphs (c)(2)(ii)(D) and (c)(3)(iii) are added to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(C) From December 1 through May 31 in the Winter Halibut Savings Area, which is the area bounded by straight lines connecting the following coordinates in the order listed (see Figure 1):

54°00′ N. latitude, 166°10′ W. longitude (Unalga Island)
52°48′ N. latitude, 170°10′ W. longitude
53°30′ N. latitude, 170°00′ W. longitude
55°30′ N. latitude, 166°47′ W. longitude
56°00′ N. latitude, 167°45′ W. longitude
56°00′ N. latitude, 166°00′ W. longitude
56°30′ N. latitude, 163°00′ W. longitude
56°30′ N. latitude, 166°00′ W. longitude
56°20′ N. latitude, 163°00′ W. longitude
55°16′ N. latitude, 166°10′ W. longitude
54°00′ N. latitude, 166°10′ W. longitude (Unalga Island)

(D) At all times in the Fishery Development Zone which is the area enclosed by straight lines connecting the following coordinates (see Figure 1):

54°36′ N. latitude, 164°55′42″ W. longitude (Cape Sarichef light)
55°16′ N. latitude, 166°10′ W. longitude
54°00′ N. latitude, 166°10′ W. longitude (Unalga Island)

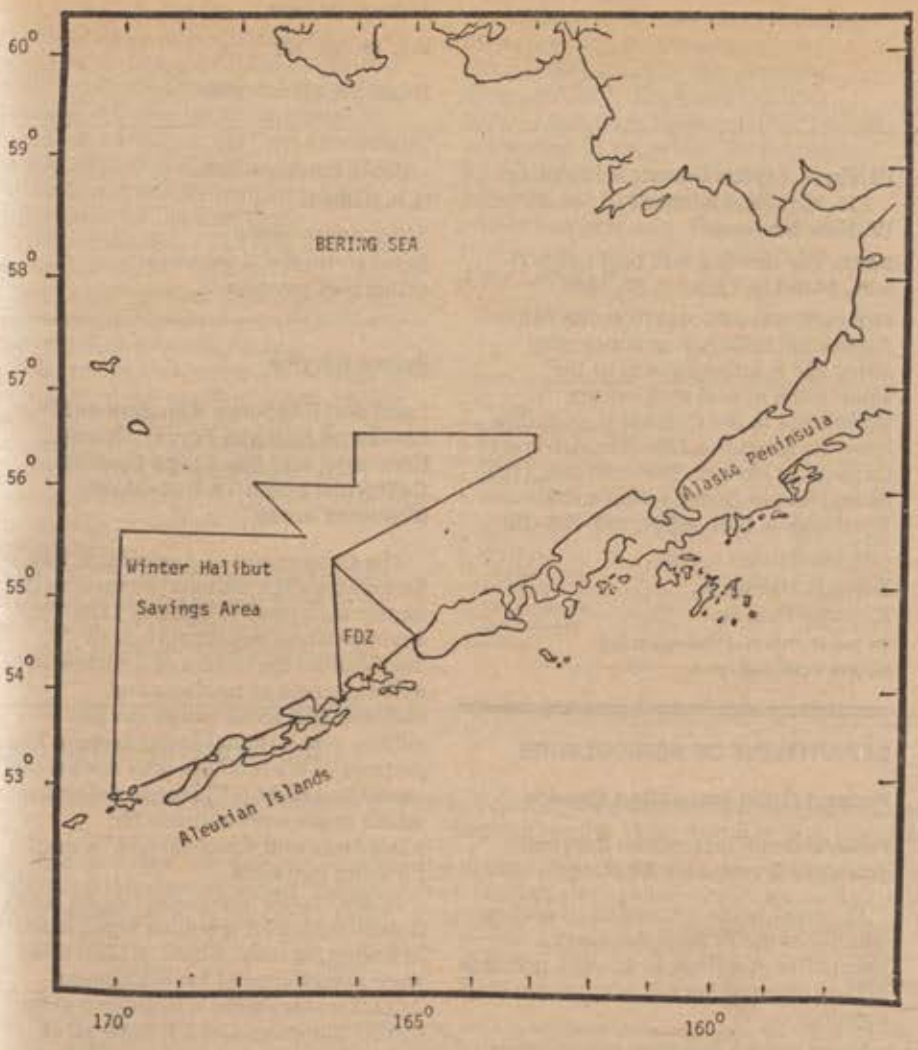


Figure 1.--Location of the Winter Halibut Savings Area and the U.S. Fishery Development Zone (FDZ) within the Bering Sea and Aleutian Islands area.

(E) * * *
(3) * * *

(iii) Longlining by foreign vessels is prohibited at all times in the Fishery Development Zone which is the area designated under paragraph (c)(2)(ii)(D) of this section.

* * * * *

[FR Doc. 83-27461 Filed 10-4-83; 5:07 pm]
BILLING CODE 3410-22-M

Notices

Federal Register
Vol. 48, No. 196
Friday, October 7, 1983

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with § 800.6(d)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that the Advisory Council on Historic Preservation will meet in the West Council Room, Old Post Office, 1100 Pennsylvania Avenue, Washington, D.C. 20004.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. Section 470) to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol, the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, Transportation; the General Services Administrator; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor, a Mayor, and eight non-Federal members appointed by the President.

The Agenda for the meeting includes the following:

Call to order
Chairman's Welcome
Swearing in Ceremony
Order of Business
Consideration of Minutes of August 29–30, 1983, Meeting
I. Report of the Executive Director
II. Regulations Review Report
III. Panel Report: Interstate Highway 210, Mobile, Alabama
IV. New Business

DATE: The meeting will begin at 9:00 a.m., Monday, October 31, 1983.

FOR FURTHER INFORMATION CONTACT: Additional information concerning either the meeting agenda or the submission of oral and written statements to the Council is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Room 809, Washington, D.C. 20004, 202–786–0503.

Dated: October 4, 1983.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 83-27435 Filed 10-6-83; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Federal Grain Inspection Service Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.
Date: October 26, 1983.
Place: Doubletree Hotel, 10100 College Boulevard, Overland Park, Kansas 66210.
Time: 8:30 a.m.
Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service on the efficient and economical implementation of the U.S. Grain Standards Act of 1976, to assure the normal movement of grain in an orderly and timely manner.

The agenda includes: (1) FY 1983 financial report and projections for FY 1984; (2) grain moisture issue; (3) proposed fee adjustment; (4) status of corn, wheat, and sunflower standards; and (5) other matters.

The meeting will be open to the public. Public participation will be limited unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact Dr. Kenneth A. Gilles, Administrator, FGIS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382–0219.

Dated: October 4, 1983.

D. R. Galliart,

Acting Administrator.

[FR Doc. 83-27511 Filed 10-6-83; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Land and Resource Management Plan, Cleveland National Forest, Orange, Riverside, and San Diego Counties, California; Intent To Reevaluate Roadless Areas

The Department of Agriculture, Forest Service issued a national environmental impact statement in January 1979. This environmental impact statement documented the results of a review of 62 million acreas of roadless and undeveloped areas within the 190 million acre national forest system. The purpose of the roadless area review and evaluation (RARE II) was to determine which areas were suitable for wilderness and which should be used for other purposes.

In the Pacific Southwest Region RARE II dealt with over 6 million areas located in California only. About 983,000 acres were recommended for wilderness; 2,643,000 acres were recommended for further planning; and 2,395,000 acres were recommended for nonwilderness.

In 1979 the State of California challenged the adequacy of the National RARE II Environmental Impact Statement as the basis for decisions to manage 46 areas in California for other than wilderness. In October 1982, the United States Court of Appeals for the ninth Circuit affirmed a lower court decision that the RARE II Environmental Impact Statement was inadequate. Although the decision applied specifically to only 46 roadless areas in California, it sets binding precedent in any Federal District Court in the Ninth Circuit.

Because of the October 1982 court decision, national forest roadless areas studied for wilderness potential during RARE II will be reevaluated. This notice is being issued because, contrary to earlier regulations (issued 9/30/82), a proposed revision to 36 CFR 219.17 (issued 4/18/83) will allow further evaluation of RARE II wilderness and nonwilderness areas during the forest planning process.

On the Cleveland National Forest roadless areas not considered for wilderness during RARE II because of earlier consideration under the NEPA process will also be reconsidered. A small area which could form an addition to a BLM proposed wilderness adjacent to the Forest will be considered for wilderness for the first time.

The revaluation of 13 roadless areas on the Cleveland National Forest will be done as part of the Forest's land and resource management plan. During the reevaluation process, current management and protection policies and activities in the roadless areas will be continued. Wilderness values will be protected in the area previously recommended for wilderness, and management for other uses will continue in areas recommended for nonwilderness.

On the Cleveland National Forest 1 roadless area containing 13,100 acres was recommended for wilderness, 2 roadless areas of 12,000 acres were recommended for non-wilderness, and 3 areas totalling 18,700 acres were recommended for further planning during RARE II. Six areas totalling 93,500 acres were recommended for non-wilderness in planning efforts prior to RARE II and one area of 1600 acres has potential for addition to a BLM wilderness proposal. These areas will now be reevaluated for wilderness. They include:

Name	RARE II	Gross acres	Net NF acres
1. Coldwater	No	9,000	9,000
2. Trabuto-Hot Springs	No	22,800	22,800
3. Wildhorse	No	10,800	10,800
4. San Mateo Canyon	No	25,900	24,700
5. Cutca Valley	No	14,800	14,800
6. Barker Valley	No	11,600	11,400
7. Caliente	FP	5,900	5,900
8. Eagle Peak	NW	6,800	6,800
9. Sill Hill	FP	5,200	5,200
10. No Name	NW	5,200	5,200
11. Pine Creek	W	13,100	13,100
12. Hauser Canyon	FP	8,000	7,840
13. Sawtooth Mtn. Addition.	No	1,600	1,600

Detailed information on the roadless areas and the reevaluation process will be distributed to individuals on the Forest mailing list and to other individuals and organizations requesting a copy. In addition, there will be an open house from 10 a.m. to 4 p.m. on November 16, 1883, in room 2S16 in the Federal Building, 880 Front Street, San Diego, CA to further explain, discuss, and gather information about the roadless areas and the reevaluation process.

For further information about the proposed reevaluation contact: Phil Winkel, 880 Front Street, Room 6–S–5, San Diego, California, Phone (619) 293–5191.

Dated: September 28, 1983.

Charles R. Marlow III,

Acting Forest Supervisor, Cleveland National Forest.

[FR Doc. 83-27359 Filed 10-6-83; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended September 30, 1983; Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Sept. 26, 1983	41721	Eastern Air Lines, Inc., Miami International Airport, Miami, Florida 33148. Application of Eastern Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedureal Reguations applies for amendment of its certificate of public convenience and necessity for Route 131 so as to authorize service as follows over a new segment: Between the terminal point Miami, Florida, the intermediate points San Juan, Puerto Rico and Panama City, Panama, and the coterminal points Rio de Janeiro and Sao Paulo, Brazil.
Sept. 28, 1983	41725	Conforming Applications, Motions to Modify Scope and Answers may be filed by October 24, 1983. Pacific Air Express, Inc., c/o Stephen A. Alterman, 1050 Seventeenth Street, N.W. 12th Floor, Washington, D.C. 20036. Application of Pacific Air Express, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests issuance of a certificate of public convenience and necessity which will authorize it to engage in scheduled and charter air transportation of property and mail between and among the islands of the State of Hawaii.
Sept. 30 1983	41732	Conforming Applications, Motions to Modify Scope and Answers may be filed by October 26, 1983. Armstrong Air Service, Inc., c/o Richard K. Armstrong, P.O. Box 204, Dillingham, Alaska 99576. Application of Armstrong Air Service, Inc., pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, applies for a certificate of public convenience and necessity for an indefinite term to perform scheduled interstate air transportation of persons, property and mail between the terminal point Dillingham and the teminal point New Stuyahok, Alaska.
Sept. 30, 1983	41342	Conforming Applications, Motions to Modify Scope and Answers may be filed by October 28, 1983. Polynesian Airlines (Holdings) Limited and Polynesian Airlines (Operations) Limited, c/o Robert D. Papkin, Squire, Sanders & Dempsey, 1201 Pennsylvania Ave., N.W., Washington, D.C. 20004. Supplement No. 1 to the Joint Application of Polynesian Airlines (Holdings) Limited and Polynesian Airlines (Operations) Limited for a foreign air carrier permit. Answers may be filed by October 26, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-27442 Filed 10-6-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of the American Economic Association; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409), notice is hereby given that the Census Advisory Committee of the American Economic Association will convene on October 28, 1983, at 9:15 a.m. in Room 2424, Federal Building 3 at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee of the American Economic Association advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning economic surveys and censuses; reviews major aspects of the Bureau's programs; and advises on the role of analysis within the Bureau.

The Committee is composed of 15 members of the American Economic Association.

The agenda for the meeting, which is scheduled to adjourn at 3:45 p.m., is: (1) Introductory remarks by the Acting Director, Bureau of the Census, including staff changes and major budget/program developments; (2) election of the chairperson-elect; (3) proposed programs in the service industries; (4) after-tax and discretionary income; (5) West German census postponement—implications for U.S. censuses and surveys; (6) preliminary work on confidentiality research; (7) update on planning the 1990 census; (8) economic censuses monograph program; (9) general discussion and recommendations; and (10) plans and date for the next meeting.

The meeting will be open to the public, and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days before the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Mr. Barry Rappaport, Bureau of the Census, Room 3061, Federal Building 3, Suitland, Maryland. (Mail address: Washington, D.C. 20233). Telephone (301) 763–5483.

Dated: October 3, 1983.

C. L. Kincannon,

Acting Director, Bureau of the Census.

[FR Doc. 83–27433 Filed 10–6–83; 8:45 am]

BILLING CODE 3510–07–M

Economic Development Administration

Redesignation and Membership Change of SES Performance Review/ Executive Resources Board

The purpose of this notice is to document the designation of members on the Executive Resources and Performance Review Board (ERPRB). The purpose of the Board is to review performance agreements, performance appraisals and ratings, recommendations for certain personnel actions and other related materials, and to make appropriate recommendations to EDA's SES appointing authority concerning such matters in a manner that will assure fair and equitable treatment of senior executives and the organizations of which they are member. No change is made to the function of the Board.

Robert M. Hill, Director, Seattle Regional Office, Economic Development Administration, Seattle, Washington, Term expires: January 15, 1985

George William Dick, Deputy Assistant Secretary for Economic Development, Economic Development Administration, Washington, D.C., Term expires: Chair; no expiration of term until further notice.

Craig M. Smith, Director, Philadelphia Regional Office, Economic Development Administration, Philadelphia, PA, Term expires: January 1986

Charles W. Coss, Director, Office of Public Works, Economic Development Administration, Washington, D.C., Term expires: January 1986

Edward M. Levin, Jr., Chief Counsel, Economic Development Administration, Washington, D.C., Term expires: January 1986

Joseph B. Swanner, Director Austin Regional Office, Economic Development Administration, Austin, Texas, Term expires: January 1986

Beverly Milkman, Director, Office of Planning, Technical Assistance, Research, and Evaluation, Economic Development Administration, Washington, D.C., Term expires: January 1986

Edward Jeep, Director, Chicago Regional Office, Economic Development Administration, Chicago, Illinois, Term expires: January 1986

John E. Corrigan, Deputy Assistant Secretary for Operations, Economic Development Administration, Washington, D.C., Term expires: January 1986

Lyle Ryter, Deputy Assistant Secretary for Trade Adjustment Assistance, International Trade Administration, Washington, D.C., Term expires: January 1986

Hugh L. Brennan, Director, Procurement and Federal Assistance, Office of the Secretary, Washington, D.C., Term expires: January 1986

Mr. Alan Cecilio, as Personnel Office, will serve as Executive Secretary to the Board. Persons desiring further information about the ERPRB or its membership may contact Mr. Cecilio, Personnel Officer, Economic Development Administration, Washington, D.C. 20230, telephone 202–377–3203.

Dated: September 27, 1983.

Carlos C. Campbell,

Assistant Secretary for Economic Development.

[FR Doc. 83–27464 Filed 10–6–83; 8:45 am]

BILLING CODE 3510–24–M

Foreign-Trade Zones Board

[Order No. 221]

Resolution and Order Approving Application of Greater Detroit Foreign-Trade Zone, Inc., for Special-Purpose Subzone in Wixom, Michigan, Adjacent to Detroit Customs Port of Entry

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 70, filed with the Foreign-Trade Zones Board (the Board) on September 24, 1982, requesting special-purpose subzone status for Ford Motor Corporation's auto assembly plant in Wixom, Michigan, adjacent to the Detroit Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Wixom, Michigan, Adjacent to the Detroit Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 70, has made application (filed September 24, 1982, Docket 22–82, 47 FR 44128) in due and proper form to the Board requesting a special-purpose subzone for Ford Motor Corporation's automobile assembly plant in Wixom, Michigan, adjacent to the Detroit Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed September 24, 1982, the Board hereby authorized the establishment of a subzone at the Wixom, Michigan auto assembly plant of Ford Motor Corporation, designated on the records of the Board as Foreign-Trade Subzone No. 70D at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act, and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to an throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 29th day of September 1983 pursuant to Order of the Board.

Foreign-Trade Zones Board.

Lawrence J. Brady,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 83-27467 Filed 10-6-83; 8:45 am]

BILLING CODE 3510-25-M

[Order No. 222]

Resolution and Order Approving Application of Greater Detroit Foreign-Trade Zone, Inc., for Special-Purpose Subzone in Dearborn, Michigan, Within Detroit Customs Port of Entry

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 70, filed with the Foreign-Trade Zones Board (the Board) on April 21, 1983, requesting special-purpose subzone status for Ford Motor Corporation's auto assembly plant in Dearborn, Michigan, within the Detroit Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority—To Establish a Foreign-Trade Subzone in Dearborn, Michigan, Within the Detroit Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit wil result;

Whereas, the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 70, has made application (filed April 21, 1983, Docket 11–83, 48 FR 19920) in due and proper form to the Board requesting a special-purpose subzone at Ford Motor Corporation's automobile assembly plant in Dearborn, Michigan, within the Detroit Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed April 21, 1983, the Board hereby authorizes the establishment of a subzone at Ford's auto assembly plant in Dearborn, Michigan, dsignated on the records of the Board as Foreign-Trade Subzone No. 70E at the location mentioned above and more particuarly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits

shall be obtained from Federal, State, and minicipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 29th day of September 1983 pursuant to Order of the Board.

Foreign-Trade Zones Board.

Lawrence J. Brady,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 83-27469 Filed 10-6-83; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 226]

Approval for Expansion of Foreign-Trade Zone No. 62, Brownsville, Texas, Within Brownsville Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board's regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Brownsville Navigation District (BND), a Texas public corporation, Grantee of Foreign-Trade Zone No. 62, which presently covers 2,000 acres, has applied to the Board for authority to expand the area approved for possible zone activity to include an additional 19,000 acres of BND property within the Brownsville Customs port of entry;

Whereas, the application was accepted for filing on July 26, 1982, and notice inviting public comment as given in the **Federal Register** on August 13, 1982 (Doc. 15–82, 47 FR 35226), with additional notice extending the comment period given on October 12, 1982 (47 FR 44806);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval with a restriction that any activation of approved zone space beyond a total of 2,000 acres would require further Foreign-Trade Zones Board approval;

Whereas, the expansion is necessary to provide greater flexibility in extending zone procedures to firms within BND's port complex; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed July 26, 1982 (Docket No. 15–82) subject to the restriction that any activation of approved zone space beyond 2,000 acres requires further Board approval. The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations. The authority given in this Order is further subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, D.C. this 30th day of September 1983.

Lawrence J. Brady,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. DaPonte Jr.,

Executive Secretary

[FR Doc. 83-27470 Filed 10-6-83; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; University of Health Sciences, Chicago Medical School

The following are notices of the receipt of applications for duty-free entry of scientific instruments published pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the instrument is intended to be used is being manufactured in the United States.

Comments must be filed in accordance with §§ 301.5(a) (3) and (4) of the regulations. They are to be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the **Federal Register.**

A copy of each application is on file in the Department of Commerce, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, Room 1523, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No.: 83–318. Applicant: University of Health Sciences, The Chicago Medical School, 3333 Green Bay Road, North Chicago, IL 60064. Instrument: Electron Microscope EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of instrument: Research studies:

(1) Ultrastructure of the normal and cancerous human liver;

(2) The hose-parasite relationship between the human and the trypanosome;

(3) Ultrastructural and pharmacological aspects of transneuronal plasticity in the central nervous system and the effects of aging related hormonal modulation of this process;

(4) Description of the biochemical and morphological changes in the uterus which accompany the implantation of the mammalian embryo;

(5) Changes in chromosomal structure through the cell cycle, elucidating the structure and role of the chromosomal scaffold found in mammalian cells;

(6) Biochemical regulation of phosphofructokinase;

(7) Description of the biochemical and physiological aspects of the process of sleep;

(8) Description of the morphological changes accompanying oogenesis in the fruit fly *Drosophila melanogaster* and the biochemical and morphological aspects of mucus secretion in a model system, the Pacific hagfish; and

(9) The process of mitosis from the perspective of the mitotic apparatus.

Application received by Commissioner of Customs: September 23, 1983.

Docket No. 83-319. Applicant: University of Health Sciences, The Chicago Medical School, 3333 Green Bay Road, North Chicago, IL 60064. Instrument: Electron Microscope EM 10 CA and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of instrument: Research studies:

(1) The host-parasite relationship between the human and trypanosome;

(2) Ultrastructural and pharmacological aspects of transneuronal plasticity in the central nervous system and the effects of aging related hormonal modulation of this process;

(3) Description of the biochemical and morphological changes in the uterus which accompany the implantation of the mammalian embryo;

(4) Changes in chromosomal structure through the cell cycle, elucidating the structure and role of the chromosomal scaffold found in mammalian cells;

(5) Biochemical regulation of phosphofructokinase;

(6) Description of the biochemical and physiological aspects of the process of sleep;

(7) Description of the morphological changes accompanying oogenesis in the fruit fly *Drosophila melanogaster* and the biochemical and morphological aspects of mucus secretion in a model system, the Pacific hagfish; and

(8) The process of mitosis from the perspective of the mitotic apparatus.

The article will also be used for teaching purposes in the course Biochemistry 5151—Electron Microscopy. Application received by Commissioner of Customs: September 23, 1983.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-27405 Filed 10-6-83; 8:45 am]

BILLING CODE 3510-25-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Purdue University

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517). A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Docket No.: 83-197. Applicant: Purdue University, West Lafayette, IN 47907. Instrument: Free Flow Electrophoresis Apparatus, Model VAP5, complete with Peristaltic Pump, Tubings and Necessary Accessories. Manufacturer: Bender and Hobein GMBH, West Germany. Intended use of instrument: See notice on page 23877 in the **Federal Register** of May 27, 1983.

Comments: No comments ahve been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument separates subfractions of cell organelles without serious biological modification. The National Institutes of Health advises in its memorandum dated September 7, 1983 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Stanley P. Kramer,

Program Manager, Florence Agreement Program, Statutory Import Programs Staff.

[FR Doc. 83-27406 Filed 10-6-83; 8:45 am]

BILLING CODE 3510-25-M

Postponement of Final Determination; Potassium Permanganate From the People's Republic of China

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Postponement of Final Antidumping Determination: Potassium Permanganate from the People's Republic of China.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from the China National Chemicals Import and Export Corporation (SINOCHEM) that the final determination be postponed until not later than 135 days after the date of publication of the preliminary determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and that the Department has determined to postpone its final determination as to whether sales of potassium permanganate from the People's Republic of China have occurred at less than fair value, until not later than December 22, 1983.

SINOCHEM is qualified to make this request since it is the exporter who accounts for virtually all of the merchandise which is the subject of this investigation. The additional time is necessary to obtain information requested by the Department. We have considered the positions presented by all parties to the investigation regarding postponement of the final determination and have determined that the additional time is necessary.

EFFECTIVE DATE: October 7, 1983.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Jr., Office of Investigations, Import Administration, Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone (202) 377-4929.

SUPPLEMENTARY INFORMATION: On March 18, 1983, the Department published a notice in the **Federal Register** (48 FR 11482) that it was initiating under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping investigation to determine whether potassium permanganate from the People's Republic of China is being, or is likely to be, sold at less than fair value.

The Department published an affirmative preliminary determination on August 9, 1983 (48 FR 36175). The notice stated that if this investigation proceeded normally we would make a final determination by October 17, 1983. On September 9, 1983, a notice of postponement of the final determination until November 22, 1983, was published in the **Federal Register** (48 FR 40771) pursuant to a request by counsel for SINOCHEM, the only known exporter to the United States of the product under investigation, that the Department postpone the final determination until 105 days after the date of its preliminary determination. Counsel for SINOCHEM has now requested that the Department extend the period for the final determination until 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2) of the Act provides that the Department may postpone its final

determination concerning sales at less than fair value if exporters who account for a significant proportion of the merchandise which is the subject of the investigation request an extension after an affirmative preliminary determination.

Accordingly, the Department will issue a final determination in this case not later than December 22, 1983. This notice is published pursuant to section 735(d) of the Act.

Dated: September 30, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-27397 Filed 10-6-83; 8:45 am]

BILLING CODE 3510-25-M

Postponement of Final Determination and Postponement of Hearing; Chloropicrin From the People's Republic of China

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Postponement of Final Antidumping Determination and Postponement of Hearing: Chloropicrin from the People's Republic of China.

SUMMARY: This notice informs the public that the Department of Commerce has received a request from China National Chemicals Import and Export Corporation (Sinochem) that the final determination be postponed until not later than 135 days after the date of the preliminary determination, as provided for in § 353.44(b) of the Department of Commerce Reglations (19 CFR 353.44(b)), and that the Department will postpone its final determination as to whether chloropicrin from the People's Republic of China has been sold at less than fair value until not later than February 1, 1984.

EFFECTIVE DATE: October 7, 1983.

FOR FURTHER INFORMATION CONTACT: Michael Ready or John Brinkman, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; Telephone (202) 377-2613 or 377-4929.

SUPPLEMENTARY INFORMATION: On May 2, 1983, the Department of Commerce published notice in the **Federal Register** (48 FR 19765) that it was initiating under Section 732(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673a(b)), an antidumping investigation to determine whether chloropicrin from the People's Republic of China is being, or is likely to be, sold at less than fair value. The Department published an affirmative preliminary determination on September 19, 1983 (48 FR 41799). The notice stated that if this investigation proceeded normally we would make a final determination by November 28, 1983. Section 735(a)(2) of the Act provides that the Department of Commerce may postpone its final determination concerning sales at less than fair value if an exporter who accounts for a significant proportion of the merchandise which is the subject of the investigation requests an extension after an affirmative preliminary determination. Sinochem is qualified to make such a request since it accounts for one hundred percent of the exports of the merchandise. The additional time is necessary to enable Sinochem to obtain and submit to the Department of Commerce additional facts and information. Accordingly, the Department will issue a final determination in this case not later than February 1, 1984.

The hearing originally scheduled for October 25, 1983, at 10:00 a.m., in room 3708, has been postponed. The new hearing date is December 14, 1983, at 10:00 a.m., in Conference Room "D", Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by December 7, 1983. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

This notice is published pursuant to section 735(d) of the Act.

Dated: September 30, 1983.

Alan E. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-27398 Filed 10-6-83; 8:45 am]

BILLING CODE 3510-DS-M

Preliminary Determination of Sales at Not Less Than Fair Value; Forged Undercarriage Components From Italy

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Determination of Sales at Not Less than Fair Value: Forged Undercarriage Components from Italy.

SUMMARY: We have preliminarily determined that forged undercarriage components from Italy are not being, nor are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination.

If this investigation proceeds normally, we will make a final determination by December 19, 1983.

EFFECTIVE DATE: October 7, 1983.

FOR FURTHER INFORMATION CONTACT: Richard Rimlinger, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-3962.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that forged undercarriage components from Italy are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act).

Case History

On April 29, 1983, we received a petition from Counsel for Jernberg Forgings Co., Lindell Drop Forge Co., Portec, Inc., Presrite Corp., Presrite of Jefferson, Inc., Walco Metal Forming Group, and Walker Forge, Inc. filed on behalf of the U.S. Industry producing forged undercarriage components. In accordance with the filing requirements of § 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petitioners alleged that forged undercarriage components from Italy are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on May 24, 1983 (47 FR 23288).

On June 13, 1983, the ITC determined that there is a reasonable indication that imports of semifinished forged undercarriage links and rollers are materially injuring a U.S. industry. The ITC also determined that there is no

reasonable indication that semifinished forged undercarriage segments and finished forged undercarriage links, rollers and segments are materially injuring U.S. industries.

Petitioners had specifically alleged that sales by Berco S.p.A. (Berco), Industria Meccanica e Stampaggio S.p.A. (IMES) and Italtractor ITM S.p.A. (Italtractor) had been made in the United States at less than fair value. However, since IMES is the only known exporter to the United States of semifinished forged undercarriage links and rollers, we limited our investigation to IMES.

On June 27, 1983, we presented an antidumping questionnaire to counsel for IMES. On August 26, 1983, we received IMES's response to the questionnaire.

Scope of Investigation

For purposes of this investigation, the term "forged undercarriage components" covers semifinished forged undercarriage links and rollers for crawler-mounted machinery. The merchandise is currently classifiable under item numbers 664.08, 692.34 and 692.35 of the *Tariff Schedules of the United States Annotated 1983.*

Since IMES is the only known exporter of this merchandise to the United States, we limited our investigation to this one firm. We investigated all sales of forged undercarriage components made by IMES during the period November 1, 1982, through April 30, 1983.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less then fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by IMES because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price for each United States sale on the packed, f.o.b. factor price to unrelated customers in the United States.

Foreign Market Value

In accordance with section 773(a)(1)(B) of the Act, we calculated foreign market value based on IMES's prices for export to a country other than the United States (a "third country"). IMES had insufficient home market sales to form the basis for fair value comparisons. We used IMES's sales prices to the United Kingdon because we believe it to be the third country with sales of the most similar forged undercarriage components to those sold in the United States and because it was the third country with the largest sales volume of the merchandise subject to this investigation.

Although petitioners alleged that IMES made sales to third countries at less then the cost of producing this merchandise within the meaning of section 773(b) of the Act, the information submitted by IMES indicates that there are sufficient sales of this merchandise in the United Kingdom sold at prices above the cost of production to form a viable basis for fair value comparisons.

For IMES, we calculated third country price on the basis of the f.o.b. factory price to unrelated customers in the United Kingdom. We made adjustments for differences in merchandise based on differences in steel costs in accordance with section 773(a)(4)(C) of the Act, and for differences in credit terms pursuant to section 773(a)(4)(B) of the Act. We also adjusted for differences in packing in accordance with section 773(a)(1) of the Act.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in making our final determination.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination.

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on November 15, 1983, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, addresss, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by November 8, 1983. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Dated: October 3, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-27395 Filed 10-6-83; 8:45 am]

BILLING CODE 3510-05-M

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Exxon Company, U.S.A. From California Coastal Commission Objection

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of Public Hearing and Extension of Comment Period.

SUMMARY: This notice sets forth the date and location of a public hearing to be held on the appeal filed by Exxon Company, U.S.A. (Exxon) with the Secretary of Commerce to override an objection by the California Coastal Commission to Exxon's certification that the proposed drilling of a maximum of three wells on the Southwest one-quarter of lease OCS–P 0467 as stated in Exxon's Outer Continental Shelf Oil and Gas Exploration Plan for the Santa Rosa Unit in the Santa Barbara Channel is consistent with the California Coastal Management Program. This notice also extends the close of the public comment period.

The appeal was filed on August 26, 1983, pursuant to Section 307(c)(3) (A) and (B) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3) (A) and (B), and implementing regulations at 15 CFR Part 930, Subpart H. Notice of the appeal was published in the **Federal Register** on September 9, 1983 (48 FR 40771).

This public hearing is authorized by 15 CFR 930.129 and will be conducted by the National Oceanic and Atmospheric Administration (NOAA) for the purpose of receiving comments from interested persons and organizations on whether Exxon's Oil and Gas Exploration Plan complies with the regulatory criteria, as set forth in 15 CFR 930.121 and 930.122, to be considered by the Secretary in deciding whether to override the consistency objection of the California Coastal Commission under Sections 307(c)(3) (A) and (B) of the CZMA. The Secretary shall override the state's objection if he finds that one of two tests have been met. To meet the first

test, four criteria must be satisfied: (a) The activity furthers one or more of the competing national objectives or purposes contained in Sections 302 and 303 of the CZMA; (b) when performed separately or when its cumulative effects are considered, the activity will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest; (c) the activity will not violate any requirements of the Clean Air Act, as amended, or the Clean Water Act, as amended; and (d) there is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the state management program. To meet the second test, the Secretary must find that a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed.

The hearing will be held on Tuesday, November 8, 1983, in the Mural Room, Santa Barbara County Courthouse at Anacapa and Anapamu, Santa Barbara, California. Interested persons may testify at the hearing which will begin at 10:00 a.m. and continue until completion late that afternoon. NOAA will provide an opportunity at the beginning of the session for Exxon and the California Coastal Commission to present a brief summary of their possitions.

Persons wishing to testify at the hearing may make their requests at the hearing or in advance by mail to: Peter L. Tweedt, Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, Department of Commerce, 3300 Whitehaven Street, NW., Washington, D.C. 20235. Requests will be honored in the order in which they are received. Presentations will be limited to a maximum of 5 minutes. This time allotment, however, may be extended before the hearing when the number of speakers can be determined. Additional written testimony may be submitted until the close of the public comment period.

The public comment is extended to November 15, 1983, in order to accommodate the public hearing schedule and to provide an opportunity for persons to respond to comments received at the public hearing. Written comments must be submitted to Peter L. Tweedt at the above address and copies provided to: 1. James C. Dale, Exxon Company, U.S.A., P.O. Box 4279, Houston, Texas 77001;

2. William Travis, California Coastal Commission, 631 Howard Street, San Francisco, CA 94105; and

3. William Grant, Minerals Management Service, Pacific OCS Region, 1340 W. 6th Street, Los Angeles, CA 90017.

Written comments and oral testimony will receive equal consideration.

Access to Exxon's Notice of Appeal and accompanying public information are available to the public at the following locations during normal working hours:

1. California Coastal Commission, 631 Howard Street, 4th Floor, San Francisco, 94105.

2. Office of Ocean and Resource Management, National Oceanic and Atomospheric Administration, Department of Commerce, Room 328A, Page 1 Building, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

3. Minerals Management Service, Pacific OCS Region, Public Information Room, 1340 W. 6th Street, Los Angeles, CA 90017.

4. Santa Barbara Public Library, 40 E. Anapamu, Santa Barbara, CA 93101.

The California Coastal Commission was granted an extension until October 25, 1983, in which to submit detailed comments in response to Exxon's appeal, pursuant to 15 CFDR 930.125 and 930.126. The public information contained in the detailed comments to be submitted by the California Coastal Commission and the Minerals Management Service will be available for public inspection at the above addresses no later than October 25, 1983.

FOR FURTHER INFORMATION CONTACT: Bernard C. Cody, Attorney Advisor, Office of General Counsel for Ocean Services (202–254–7512), or Nan Evans, Senior Policy Analyst, Office of Ocean and Coastal Resource Management (202–634–4249).

SUPPLEMENTARY INFORMATION: For a more detailed description of Exxon's appeal, see **SUPPLEMENTARY INFORMATION** published in the **Federal Register**, September 9, 1983 (48 FR 40771).

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: October 5, 1983.

K. E. Taggart,

Assistant Administrator, National Ocean Service.

[FR Doc. 83-27583 Filed 10-6-83; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Additional Import Control Limits and Applying Flexibility to Certain Cotton, Wool and Man-Made Fiber Textile Products from the Philippines

October 4, 1983.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs, to be effective on October 11, 1983. For further information contact Carl Ruths, (202/377–5423)

Background

A CITA directive dated December 22, 1982 (47 FR 57986) established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, if exported during the twelve-month period which began on January 1, 1983. In the letter published below, additional control limits are being established for Categories 338/339, 352 pt., 447, 634, 638/639, 640, 647, 648 pt., and 652 pt. during the same twelve-month period. Also, under the provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1982 between the Governments of the United States and the Republic of the Philippines flexibility (swing, carryover, and carryforward) is being applied variously, to the levels for Categories 333/334, 335 pt., 336 pt., 341, 347, 445/446, 635 pt., 636 pt., 640, 641 pt., 645/646 pt., 647, 648, and 638/639.

Carryforward applied to the limits for Categories 333/334, 335 pt., 341 pt., 445/446, 635, 645/646 pt., and 648 pt. will, to the extent used in 1983, be deducted from the limits established for these categories in 1984. The newly controlled limit for Category 338/339 has also been adjusted to include swing and carryover. The levels for Categories 447, 640, 647, and 648 pt. have been reduced to account for swing applied to other categories.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as

amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

October 4, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This letter further amends, but does not cancel, the letter of December 22, 1982, which directed you to prohibit entry into the United States of certain specified categories of textile products, produced or manufactured in the Philippines.

Effective on October 11, 1983, paragraph 1 of the directive of December 22, 1982 is hereby further amended to include levels of restraint for the following categories:

Category	Twelve-month level of restraint [1] (dozen)
338/339	944,465
352 pt.[2]	87,925
447	5,905
634	198,129
638/639	651,001
640	93,439
647	84,673
648 pt.[3]	164,597
652 pt.[4]	576,234

[1] The levels of restraint have not been adjusted to reflect any imports after December 31, 1982.
[2] In Category 352 all T.S.U.S.A. numbers except 378.0550, 378.0571, 378.1035, and 383.2030.
[3] In Category 648, only T.S.U.S.A. numbers 381.1940, 383.2250, 383.6146, and 383.9071.
[4] In Category 652, all T.S.U.S.A. numbers except 378.6530.

Textile products in the foregoing categories which have been exported to the United States prior to January 1, 1983 shall not be subject to this directive.

Textile products in the foregoing categories which have been released from the custody of the U.S. Custom Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Also effective on October 11, 1983, paragraph 1 of the directive of December 22, 1982 is further amended to include adjusted levels of restraint for the following categories: [1]

Category	Twelve-month adjusted level of restraint [2] (dozen)
333/334	81,813
335 pt.[3]	40,093
336 pt.[3]	21,964
341 pt.[4]	75,853

[1] The agreement, provides, in part, that (1) specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Category	Twelve-month adjusted level of restraint [1] (dozen)
341 pt.[2]	105,257
347	302,211
445/446	20,469

[1] The levels of restraint have not been adjusted to reflect any imports after December 21, 1982.
[2] In Category 335, all T.S.U.S.A. numbers except 383.3300, 383.3405, 383.3410, 383.3415, 383.3445, 383.3448, 383.3450, 383.3460 and 383.3465.
[3] In Category 336, all T.S.U.S.A. numbers except 383.0306, 383.0815, 383.2920, 383.4616, 383.4620 and 383.4823.
[4] In Category 341, only T.S.U.S.A. numbers except 383.0506, 383.4704, 383.4707, and 383.4711.
[5] In Category 341, all T.S.U.S.A. numbers in the category except those listed in footnote 3.

Category	Twelve-month adjusted level of restraint [1] (dozen)
635 pt.[2]	245,181
636 pt.[3]	49,533
641 pt.[4]	215,088
645/646 pt.[5]	98,535
648 pt.[6]	63,329

[1] The levels of restraint have not been adjusted to reflect any imports after December 31, 1982.
[2] In Category 635, all T.S.U.S.A. numbers except 383.8116 and 383.8117.
[3] In Category 636, all T.S.U.S.A. numbers except 383.2016, 383.8622, 383.2315, and 383.9230.
[4] In Category 641, all T.S.U.S.A. numbers except 383.2215 and 383.9030.
[5] In Category 645/646 pt., all T.S.U.S.A. numbers except 383.1857 and 383.8070.
[6] In Category 648, all T.S.U.S.A. numbers except 383.1940, 383.8146, 383.2250, and 383.9071.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-27463 Filed 10-6-83; 8:45 am]

BILLING CODE 3510-DR-M

Withdrawal of Call for Consultations With the Government of the Hungarian People's Republic on Trade in Category 434 (Men's and Boys' Other Coats)

October 3, 1983.

On July 21, 1983 a notice was published in the **Federal Register** (48 FR 33331) announcing that on June 29, 1983 the Government of the United States, under Article 3 and Annex B of the Arrangement Regarding International Trade in Textiles, had requested the Government of the Hungarian People's Republic to enter into consultations concerning exports to the United States of men's and boys' other wool coats in Category 434, produced or manufactured in Hungary. The purpose of this notice is to announce that, based on consideration of additional information about domestic market conditions in the men's and boys' wool coat sector, the United States Government has concluded that there is no need to discuss exports of these goods from Hungary at this time and has so notified the Government of the Hungarian People's Republic. Should it become necessary to discuss this trade at a later date, further notice will be published in the **Federal Register.**

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-27396 Filed 10-6-83; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade; Proposed Rules Relating to Exchange Speculative Position Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed adoption of contract market rules.

SUMMARY: The Chicago Board of Trade ("CBT") has submitted to the Commission proposed rules setting speculative position limits for currently designated contract markets pursuant to Commission Rules 1.61 and 1.41, 17 CFR 1.61 and 1.41 (1982), and Section 5a(12) of the Commodity Exchange Act, as amended, 7 U.S.C. 7a(12) (1982). The Commodity Futures Trading Commission ("Commission") has determined that for currently designated contracts, initial exchange proposals to set speculative limits are potentially of major economic significance. Accordingly, the Commission has determined that publication of these proposals is in the public interest, that receipt of public comment will assist the Commission in its consideration of the exchange submissions, and that publication is consistent with the purposes of the Commodity Exchange Act.

SUPPLEMENTARY INFORMATION: The CBT has submitted to the Commission pursuant to Commission Rules 1.61 and 1.41, 17 CFR 1.61 and 1.41 (1982) and Section 5a(12) of the Commodity Exchange Act, as amended, 7 U.S.C. 7a(12) (1982) proposed exchange rules setting speculative position limits in eleven designated contract markets. These are: gold, GNMA-CDRs, U.S. Treasury bonds, 90-day commercial paper, 30-day commercial paper, short-term U.S. Treasury notes (2-year), long-term U.S. Treasury notes (6½–10 year), U.S. Treasury notes (4–6 year), domestic CDs, U.S. Treasury bills, and plywood.[1]

[1] In addition, seven other domestic boards of trade have submitted for Commission approval

Continued

The Commission, in accordance with Section 5a(12) of the Act, has determined that the proposed rules setting exchange speculative position limits on currently designated contracts are potentially of major economic significance.[2] Accordingly, the Commission seeks to receive comments from interested persons with respect to these proposed exchange rules. The CBT's speculative limit proposal will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies can be obtained through the Office of the secretariat by mail at the above adress or by phone at (202) 254–6314.

Other materials submitted by the CBT in support of these proposed rules may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1981)). Requests for compies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed exchange rules should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by November 7, 1983. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on October 4, 1983.

Jane K. Stuckey,

Secretary to the Commission.

[FR Doc. 83-27404 Filed 10-6-83; 8:45 am]

BILLING CODE 6351-01-M

speculative position limits for currently designated contract markets. The proposed rules submitted by the Chicago Merchantile Exchange, the Commodity Exchange, Inc., the New York Futures Exchange, the MidAmerica Commodity Exchange and the New York Merchantile Exchange have already been published in the **Federal Register** on July 20, 1982 (47 FR 31417); correction, 47 FR 34615 (August 10, 1982); 47 FR 56537 (December 17, 1982); 48 FR 30425 (July 1, 1983). The staff of the Commission will be reviewing the remaining two proposals following its consideration of this proposal.

[2] This determination is based upon a finding that the initial impostition of speculative position limits for designated contract markets which currently do not have such limits may be of economic significance to those currently trading in a contact which has no existing speculative limits. However, the Commission believes that the subsequent adjustment of existing exchange speculative limits generally would not be of major economic significance.

DEPARTMENT OF DEFENSE

Department of the Army

Medical Research and Development Advisory Committee; Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Subcommittee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Blood Preservation and Substitutes Group.

Date of Meeting: October 30, 1983.

Time and Place: 0830 hrs, Sheraton Center, 811 7th Avenue and 52nd Street, New York City, New York.

Proposed Agenda: This meeting will be open to the public from 0830 to 1015 hrs on 30 October for the administrtive review and discussion of the scientific research program of the Blood Preservation and Substitutes Group, Letterman Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), U.S. Code, Title 5 and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 1015 to 1200 hrs and from 1300 to 1700 hrs for the review, discussion and evaluation of individual programs and projects conducted by the US Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Ryan Neville, Assistant Director, Research Contract Management, Letteman Army Institute of Research, Presidio of San Francisco, CA 94129 (415/561–4367) will furnish summary minutes, roster of Subcommittee members and substantive program information.

Harry G. Dangerfield,

Colonel, MC, Deputy Commander.

[FR Doc. 83-27364 Filed 10-6-83; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Office of the Secretary

National Environmental Policy Act; Record of Decision for Remedial Actions at the Former Vitro Rare Metals Plant Site, Canonsburg, Pennsylvania

AGENCY: Department of Energy.

ACTION: Decision to stabilize residual radioactive wastes in place at the expanded Canonsburg and Burrell Township sites.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR Part 1505) implementing the procedural provisions of the National Environmental Policy Act (NEPA) and the Department of Energy's (DOE) guidelines for compliance with NEPA (45 FR 20694, March 28, 1980), the Office of Assistant Secretary for Nuclear Energy of DOE is issuing a Record of Decision on the environmental impact statement (EIS) prepared for remedial Actions at the Former Vitro Rare Metals Plant Site. DOE is also issuing concurrently a floodplain statement of findings for the proposed actions pursuant to Executive Order 11988 and 10 CFR 1022.18.

Background

On November 8, 1978, the Uranium Mill Tailings Radiation Control Act (UMTRCA), Pub. L. 95–604, was enacted reflecting an express Congressional finding that uranium mill tailings located at inactive processing sites may pose a potential health hazard to the public. DOE has designated 24 inactive processing sites for remedial action under Title I of UMTRCA, including the former Vitro Rare Metals Plant Site at Canonsburg, Pennsylvania (44 FR 74892).

UMTRCA charges the Environmental Protection Agency (EPA) with the responsibility for promulgating remedial action standards for inactive mill sites. The purpose of these standards is to protect the public health and safety and the environment from radiological and nonradiological hazards associated with residual radioactive materials at the sites. The final standards (40 CFR Part 192) were promulagated on Junary 5, 1983, with an effective date of March 7, 1983. The DOE has selected and will execute a plan of remedial action that will satisfy the EPA standards. Under UMTRCA, the DOE and the Commonwealth of Pennsylvania entered into a cooperative agreement effective September 5, 1980, for remedial action at the Canonsburg site and associated vicinity properties, including the Burrell Township site. Under the agreetment, the Commonwealth must concur with the remedial action plan to be developed for the site, the Commonwealth aquires the designated Canonsburg site, and DOE and the Commonwealth will cost-share the remedial action at a 90:10 ratio, with the Commonwealth paying ten percent of remedial action costs.

All remedial actions must be selected and performed with the concurrence of the Nuclear Regulatory Commission (NRC). In conformance with the

UMTRCA, the required NRC concurrence with the selection and performance of proposed remedial actions and the licensing of the long-term maintenance and surveillance of disposal sites will be for the purpose of ensuring compliance with the standards set by the EPA.

Project Description

From 1942 through 1957, Vitro Manufacturing Company conducted uranium-processing operations at an 18.5-acre site in Canonsburg, Washington County, Pennsylvania and sold the uranium to the Atomic Energy Commission (AEC). Process wastes from these operations were stored on the site during this period. From 1956 to 1957, with the approval of the AEC and the Pennsylvania Railroad, approximately 11,600 tons of the estimated total 300,000 tons of residual radioactive materials were moved from the Vitro site to a railroad landfill located in Burrell Township, Indiana County, Pennsylvania. The Vitro property was sold in 1962 and developed in 1966 as Canon Industrial Park. At various times contaminated soils and building materials were removed from the Vitro property and used in local construction projects. It is estimated that about 110 properties in the vicinity of the Canonsburg site have been affected by these construction activities.

The purpose of the remedial action is to stabilize the residual redioactive wastes presently located at the Canonsburg site and at the Burrell Township site in a manner that complies with EPA stantards (40 CFR Part 192) and other applicable Federal, State, and local laws. Although the Canonsburg site as designated encompasses 18.5 acres, DOE plans to purchase the residences along Ward Avenue and George Street and the former Georges Pottery property on George Street, which will expand the Canonsburg disposal site to about 30 acres. In addition, while the Burrell Township site to about 30 acres. In addition, while the Burrell Township site has been designated a vicinity property, it is DOE's intent to acquire and maintain title to the property after completion of the remedial action.

At the expanded Canonsburg site, the principal feature of the proposed action is the consolidation of the more contaminated soils (i.e., material with radium-226 concentrations which are or could become greater tha 100 picocuries per gram of soil) into a lined encapsulation cell to control radon exhalation and to protect the ground water. The remaining contaminated materials on the site will be buried under a minimum of 2 feet of clean fill.

The completed encapsulation cell will encompass about 6 acres. The cell will be constructed with a clayey soil liner on the bottom and a low permeability cover. The top of the embankment will be about 20 feet above the elevation of the existing granes with a maximum of 1 vertical to 5 horizontal side slopes. The bottom of the encapsulation cell will be placed above the 100-year floodplain.

The residential area north of the abandoned Washington-Canonsburg Street Railway right-of-way and along George Street will require little remedial action except for demolition or removal of the residential buildings. The buildings will be demolished (leaving foundations in place) and the debris will be spread over the remainder of the expanded site. Distrubed areas will be covered with clean soil for revegetation.

After completion of the cell, the remainder of the expanded site (excluding the former residential areas) will be covered with a minimum of 2 feet of clean fill, contoured for drainage, and revegetated. Strabane Avenue will be decontamiated and repaved. Chain link fences with warning signs will enclose the site while leaving access over Strabane Avenue open to the public.

At the Burrell Township site the completed stabilized area will encompass about 4 acres in the northwest portion of the site. Soil will be brought from elsewhere on the property or from the immediate area to form a low permeability cover over the top. The surface will be graded to maximize runoff and vegetated to minimize erosion. Chain link fences with warning signs will enclose the portion of the final site containing buried radioactively contaminated wastes.

Description of Alternatives

The following alternatives were considered in detail by DOE in reaching its decision to stabilize the residual radioactive wastes in place.

1. No action: This alternative consists of performing no remedial action; however, radon exhalation and external gamma radiation at the Canonsburg and Burrell Township sites exceed EPA standards. This alternative is unacceptable since UMTRCA directs DOE to ensure that the completed remedial action is in compliance with EPA standards.

2. Decontamination of the Burrell site, transfer of the Burrell site's residual radioactive wastes to the Canonsburg site, and stabilization of both the Canonsburg and Burrell sites' wastes at the Canonsburg site.

All residual radioactive wastes at the Burrell and Canonsburg sites would be stabilized at the Canonsburg site. The Canon Industrial Park's buildings would be demolished, and the contaminated portions buried with other radioactive residues. Seven nearby houses (six on Ward Avenue and one on George Street) and the Georges Pottery buildings would also be demolished. The EPA standards (40 CFR Part 192) would be met by moving from the Burrell site all materials not meeting the EPA soil contamination standard and encapsulating this material with the more contaminated portion of the Canonsburg site residues at the Canonsburg site. The encapsulation process would consist of placing the residual radioactive mateial in a disposal area that would be lined—top, sides, and bottom—with a relatively impermeable material to control contaminant migration and infiltration of precipitation. The remainder of the Canonsburg site's residual radioactive material, including material with radium–226 concentrations less than 100 pico-curies per gram of soil, would be stabilized in place by covering the entire site with a minimum of two feet of clean fill.

3. Decontamination of both the Canonsburg and Burrell sites, and disposal of all of the wastes at the Hanover site.

All materials with radium-226 concentrations in excess of the EPA standards would be removed from the Canonsburg and Burrell sties. Work at the Burrell site would be the same as under Alternative 2. At the Canonsburg site, however, a greater amount of material would have to be excavated and handled during decontamination than during stabilization-in-place. The residual radioactive wastes would be encapsulated at the Hanover site by methods similar to those described for the Canonsburg site under Alternative 2.

After project completion, the Canonsburg and Burrell sites would be available for unrestricted use, while ownership of the Hanover site would be transferred to the DOE.

4. Decontamination of the Canonsburg site, disposal of its wastes at the Hanover site, the stabilization of the Burrell site's contaminated material at the Burrell site.

This alternative would be the same as Alternative 3 for the Canonsburg and Hanover sites, and Alternative 2 for the Burrell site.

Additional remedial-action alternatives were identified but eliminated from further consideration because they do not represent

reasonable alternatives (See Section 3.1.6 of the final EIS).

Basis for Decision

Pursuant to the requirements of UMTRCA, EPA identified the environmental and health problems posed by inactive uranium mill tailings sites. EPA determined that the most significant public health risks associated with inactive tailings were posed by exposure to people living and working in structures contaminated by relocated tailings. As a result of these conclusions, prevention of misuse and dipersal of tailings is the primary objective of the EPA standards. Accordingly, long-term stability was emphasized in the development and promulgation of the rules. This is consistent with the guidance provided by the legislative history of Pub. L. 95-604 which stresses the importance of avoiding remedial actions which would be effective only for a short period of time and which would require future Congressional consideration.

The EPA standard-setting process distinguished "passive controls," such as thick earthen and rock covers, from "active controls" such as semi-permanent covers. The standard is framed as a longevity requirement which recognizes the difficulty in predicting very long-term performance with a high degree of confidence. Therefore, a design objective of 1000 years was established with a minimum period of 200 years; a time span which is more consistent with engineering experience.

In establishing standards, EPA determined that the radon emission limitation could be achieved by well-designed thick earthen covers. These control techniques would also be compatible with those required to meet the longevity standard.

The standards recognize the need for institutional controls such as custodial maintenance, surveillance, and emergency response measures. In its preamble to the rules, EPA calls for such controls to be provided as an essential backup to the primary passive controls. The potential for contamination of ground water and surface water is to be addressed on a site-specific basis.

It is the intent of DOE to meet EPA standards for remedial action at the expanded Canonsburg site and the Burrell Township site. It is clear from the EIS that each action alternative (i.e., alternatives other than no action) will meet the EPA standards. It is also evident that none of the action alternatives is so clearly environmentally superior that it can be identified as environmentally preferable. The offsite alternatives, Alternatives 3 and 4, would relocate the radioactivity contaminated material in a less populated area, and would remove all radioactively contaminated material from the floodplain of Chartiers Creek. On the other hand, the EIS indicates that transportation impacts and health impacts to remedial action workers and the public are somewhat less for the stabilization-in-place alternative. Further, it has been shown to be far less costly than the other alternatives. Any environmental advantages of the offsite alternatives are minor.

Considerations in the Implementation of the Decision

DOE is aware of the many concerns that have been expressed about the environmental and health impacts from the remedial action. In implementing its decision, DOE will comply with applicable Federal, state, and local regulations to avoid or minimize health and environmental impacts.

One such area of regulatory concern is addressed in various floodplain protection legislation. Accordingly, because construction activity, portions of the disposal site, and residual radioactive wastes are located within the 100-year floodplain, as delineated on the appropriate Department of Housing and Urban Development floodplain map, DOE has prepared a floodplain assessment (Appendix J, Final EIS) pursuant to Executive Order 11988 and DOE's floodplain management regulations (10 CFR Part 1022). Alternatives to this proposed action were identified, environmental impacts evaluated, and mitigation measures were proposed. In the floodplain statement of findings, being issued concurrently with this Record of Decision, DOE has determined that no practicable alternative exists to the proposed construction in the floodplain.

The proposed action includes all practicable measures to minimize harm to the floodplain. These measures include:

- Locating the bottom of the encapsulation cell above the 100-year floodplain.
- Encapsulating wastes above the 500-year floodplain.
- Locating the cell such that it is not subject to erosive effects from the 1000-year flood.
- Providing additional rock protection to above the 1000-year flood level.
- Designing the cell so that velocities from the probable maximum flood will not affect cell integrity.
- Locating a buried rock structure along the Creek to preclude lateral migration into the site.
- Covering the limited quantity of buried wastes remaining in the floodplain with an additional minimum of 2 feet of clean fill.
- Revegetating the site.

In summary, all practicable means to minimize harm to the floodplain have been taken into account in the proposed action.

The following monitoring and mitigation measures will also be employed to avoid or minimize impacts during the remedial action:

- Radiaton release—The release of contaminated particulates will be reduced by dampening contaminated material with water, by stopping contaminated material-handling operations during adverse weather conditions and by using trucks with tight-fitting tailgates and covers when the material is to be moved.

The off-site transportation of radioactively contaminated material will be controlled by the use of decontamination facilities (e.g., truck wash stations) to clean trucks and vehicles before they leave the site. All waste-water streams will be monitored and treated before off-site disposal, and all disturbed areas will be isolated from surface-water systems by erosion-control methods.

Human exposure to residual radioactive material will be reduced by relocating the residents of the seven houses and the tenants of the former Georges Pottery from the expanded Canonsburg site, by restricting access, and by providing the monitoring and protective equipment necessary for use by the remedial action workers.

- Air emission—Construction areas and roads will be sprayed during the remedial-action period with a dust suppresant. Contaminated material will not be transported in open trucks. No material will be disrupted during adverse weather conditons.
- Water contamination—To prevent possible flooding of the sites during excavation and handling of the contaminated material, protective dikes isolating the disturbed material from surface-water systems will be installed. The construction of a collecting and settling basin and an associated waste-water treatment plant will permit the collection and treatment of waste water resulting from washing vehicles and equipment. Contaminated storm water that might collect in excavations or as runoff from the contaminated areas and ground water pumped from the Canonsburg site will also be routed through this facility before it is discharged to Chartiers Creek. All effluent water will be monitored and

treated to meet National Pollutant Discharge Elimination System water-quality criteria before being discharged to Chartiers Creek. The sediment from the sedimentation basin and the resins and residues from the waste-water treatment plant will be buried on the site.

• Transportation networks—Whenever feasible, the high-capacity, primary road networks will be used to minimize the possiblity of damage to the transportation network and to minimize congestion that could be a nuisance to the local populace. Where possible, truck traffic through the Borough of Canonsburg will be scheduled to avoid school zones during school activity times, and congested areas during peak use times. A truck haul road is planned along the railroad right-of-way to minimize traffic increases on local streets.

Details for the monitoring plans and mitigations specified above will be contained in several documents scheduled for publication prior to remedial action. These include the Remedial Action Plan (includes the Health and Safety Plan, Radiological Support Plan, Conceptual Design), Site Design Criteria, final design and specifications, and the UMTRA Project Health and Safety Plan.

Conclusions

After consideration of all reasonable project alternatives, DOE has decided to proceed with stabilization-in-place for residual radioactive materials at the expanded Canonsburg site and at the Burrell Township site.

Issued in Washington, D.C. on September 21, 1983.

Thomas A. Dillon,

Principal Deputy Assistant Secretary for Nuclear Energy, Department of Energy.

[FR Doc. 83-26684 Filed 10-3-83; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Miscible Displacement Task Group of the Committee on Enhanced Oil Recovery; Meeting

Notice is hereby given that the Miscible Displacement Task Group of the Committee on Enhanced Oil Recovery will meet in October 1983. 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 Enhanced Oil Recovery will investigate the technical and economic aspects of increasing the Nation's petroleum production through enhanced oil recovery. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location, and agenda of the Miscible Displacement Task Group meeting follows:

The Miscible Displacement Task Group will hold its tenth meeting on Tuesday and Wednesday, October 25 and 26, 1983, starting at 9:00 a.m. each day, in Room 1603, Mobile Exploration and Production Services, Inc., 7200 North Stemmons Freeway, Dallas, Texas.

The tentative agenda for the Miscible Displacement Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review progress of Task Group study assignments.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Miscible Displacement Task Group 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 Miscible Displacement 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 G. J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353-3032, 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 1E-190, DOE Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on October 3, 1983.

Donald L. Bauer,

Principal Deputy Assistant Secretary for Fossil Energy.

[FR Doc. 83-27449 Filed 10-6-83; 8:45 am]

BILLING CODE 6450-01-M

Floodplain Statement of Findings; Remedial Action at the Former Vitro Rare Metals Plant Site at Canonsburg, Pennsylvania

Under authority granted by the Uranium Mill Trailings Radiation Control Act of 1978 (Pub. L. 95-604 dated November 8, 1978), the U.S. Department of Energy (the Department) proposes to clean up the radioactive residues remaining at the inactive uranium mill trailings site located in Canonsburg, Washington County, Pennsylvania, and at an associated vicinity property in Burrell Township, Indiana County, Pennsylvania. The proposed remedial actions will move and stabilize the radioactive residues according to a plan that has the concurrence of the U.S. Nuclear Regulatory Commission and is in conformance with the U.S. Environmental Protection Agency Standards for Cleanup of Inactive Uranium Processing Sites (40 CFR Part 192).

Most of the radioactively contaminated material at Canonsburg is currently below the water table in an area that is partially within the 100-year floodplain of Chartiers Creek and lies totally within the 500-year floodplain (see Attachment A). All the alternatives except no action, therefore, involve earthmoving and construction activities within the 100-year flooplain.

Although the Burrell site lies within the Corps of Engineers flood easement for the Conemaugh Dam, the only actions required within the 100-year floodplain of the Conemaugh River will be the removal of a low earthen dam on the site and the draining of the ponds formed by the dam. If remedial action is to be carried out, there is no practicable alternative to conducting earthmoving and construction activities within the floodplain.

The action proposed by the Department involves the relocation of most of the contaminated materials now at Canonsburg into an encapsulation cell above the elevation of the 100-year floodplain. This will be accomplished by filling in a small area of the floodplain to raise that area above the level of the 100-year floodplain and by constructing the encapsulation cell there as shown in Attachment B. The small amounts of residues that will not be encapsulated are less radioactive; they will be left in place and covered with a thick layer of soil. If the radioactively contaminated material is stabilized on the site, there is no practicable alternative to locating a part of the encapsulation cell on fill in a small portion of the 100-year floodplain.

The Department examined five alternatives for the remedial actions on the *Final Environmental Impact Statement, Remedial Action at the Vitro Rare Metals Plant Site, Canonsburg, Washington County, Pennsylvania*, DOE/EIS-0096-F. The Department's proposed action is stabilization of the Canonsburg site's radioactively contaminated materials at the expanded Canonsburg site and the Burrell site's

radioactively contaminated materials at the Burrell site. The four additional alternatives analyzed in the environmental impact statement (EIS) are: (1) No action; (2) decontamination of the Burrell site, transfer of the Burrell site's radioactively contaminated materials to the Canonsburg site, and stabilization of both the Canonsburg and the Burrell sites' radioactively contaminated materials at the expanded Canonsburg site; (3) decontamination of both the Canonsburg and the Burrell sites, and disposal of all of the radioactively contaminated materials at a third site in Hanover Township, Washington County; (4) decontamination of the Canonsburg site, disposal of its radioactively contaminated materials at the Hanover site, and stabilization of the Burrell site's radioactively contaminated materials at the Burrell site.

Pursuant to 10 CFR 1022, the Department prepared a floodplain assessment that is incorporated in the final EIS (Appendix J).

During the construction period of the remedical action the construction area will be protected by a temporary flood control berm. To prevent the contamination of surface waters by the radioactive residues, provision will be made to collect possibly contaminated waters in a sedimentation pond (cross section shown in Attachment B) and to treat them to National Pollutant Discharge Elimination System standards before their release into Chartiers Creek. The buried riprap wall is to prevent Chartiers Creek from migrating laterally into the site, and the thickened covering of pit run rock on the encapsulation area is to protect the capsule from possible erosion under extreme flood conditions.

All the actions will be designed to conform to applicable state and local floodplain protection standards. Before actual construction begins, all applicable permits, such as those required under the Dam Safety and Encroachment Act of 1978, will be obtained from the Pennsylvania Department of Environmental Resources and other agencies having jurisdiction.

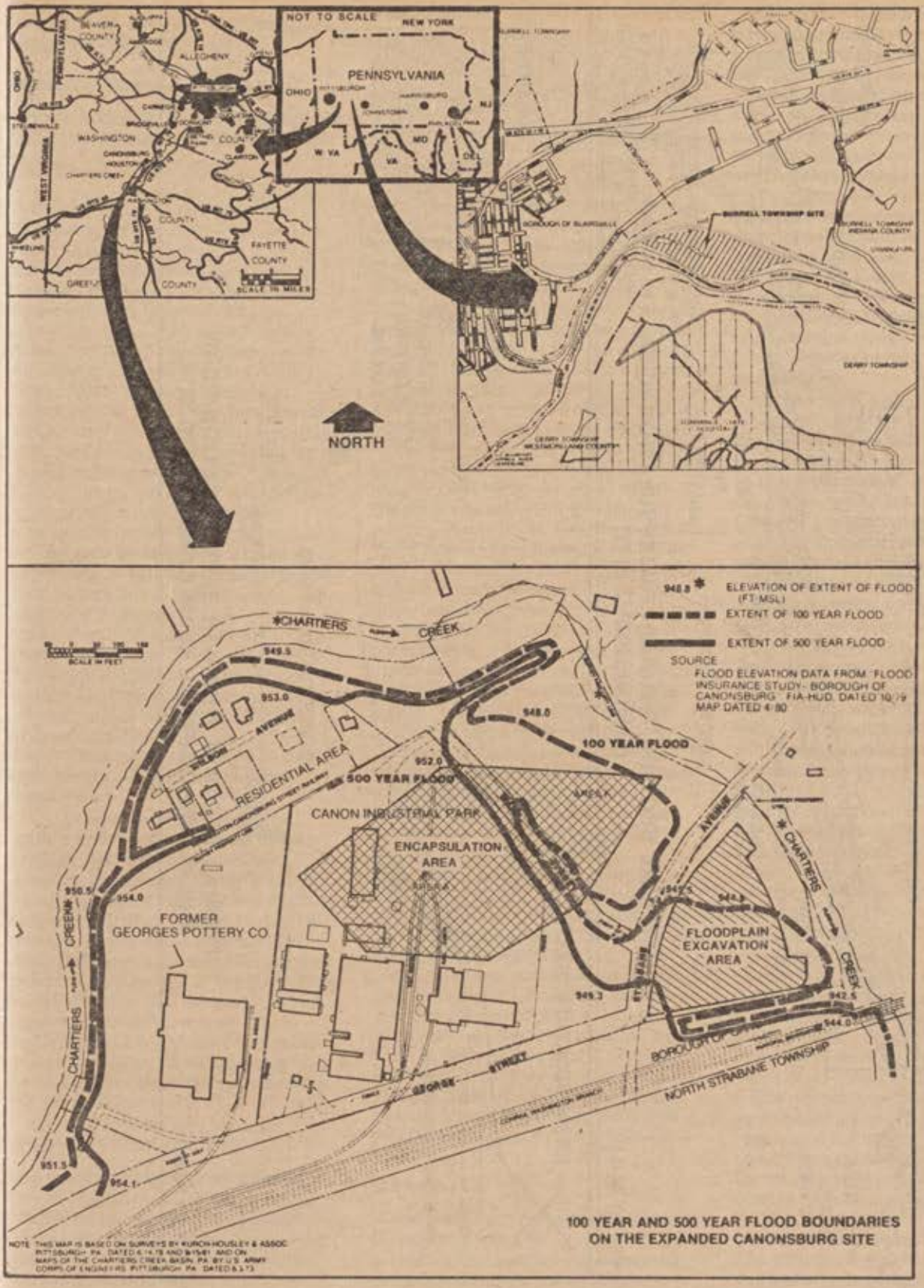
The Department has determined that the offsite alternatives (3) and (4) are not practicable, in that they entail much higher costs for minimal environmental benefits. On the basis of the floodplain assessment the Department has determined that, for stabilizing the radioactively contaminated material on the site, there is no practicable alternative to the proposed construction in the floodplain and that the proposed action has been designed to minimize potential harm to or within the floodplain.

Issued in Washington, D.C. on September 16, 1983.

William A. Vaughan,

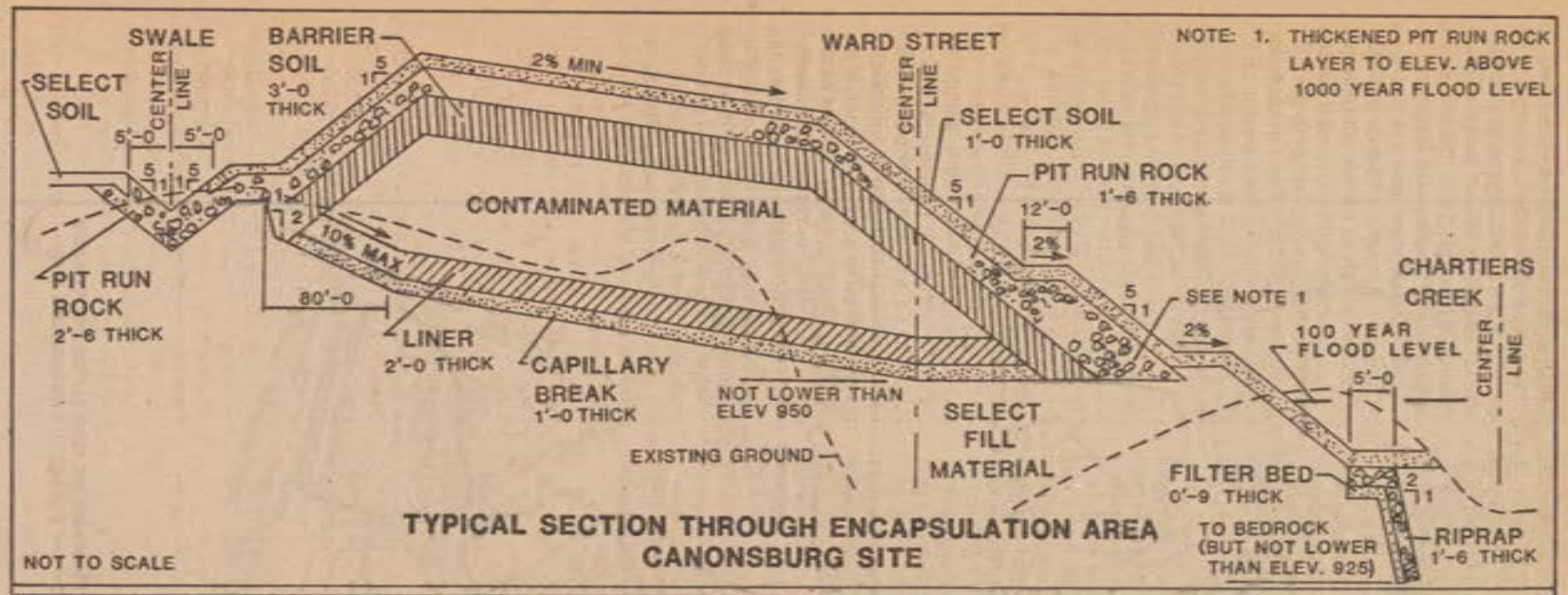
Assistant Secretary, Environmental Protection, Safety, and Emergency Preparedness.

BILLING CODE 6450-01-M

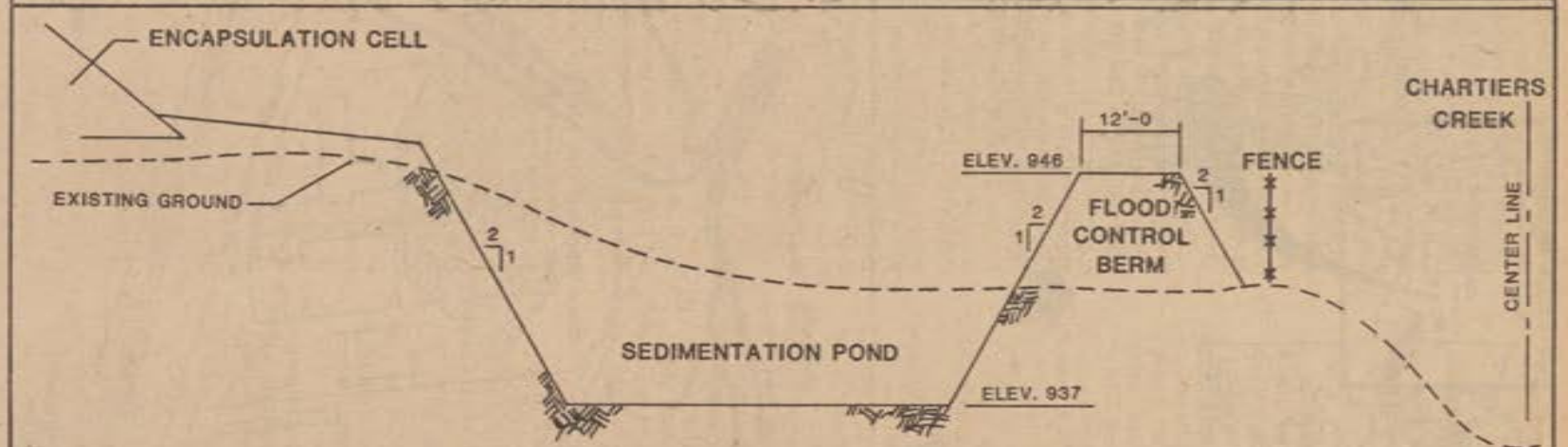


Attachment A.

[FR Doc. 83-26983 Filed 10-6-83; 8:45 am]
BILLING CODE 6450-01-C



TYPICAL SECTION THROUGH ENCAPSULATION AREA CANONSBURG SITE



TYPICAL SECTION THROUGH SEDIMENTATION POND AND FLOOD CONTROL BERM CANONSBURG SITE

Attachment B.

Interest Rate Formula for Power Marketing Administrations

AGENCY: Department of Energy.

ACTION: Notice of Change in Formula for Determining Power Repayment Interest Rates.

SUMMARY: Notice is given that the Department of Energy has adopted a new formula for determining interest rates to be used, unless otherwise provided by law, by the Alaska Power Administration, Bonneville Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western Area Power Administration, referred to collectively as PMAs. The new formula will be used in computing interest during construction and interest expense on the unpaid balance of the costs of new Federal power facilities financed with appropriations, unless a different interest rate is prescribed by law, and will be used in computing interest on deferred or unpaid annual expense. New Federal power facilities include additions, betterments and replacements. The facilities are those constructed by the PMAs, the Corps of Engineers, the Bureau of Reclamation, and the United States Section, International Boundary and Water Commission, United States and Mexico. The interest rate is to be used in power repayment studies for ratemaking purposes.

The new formula will make the applicable interest rate equal to the average yield rate computed by the Treasury Department for the previous fiscal year rather than allow changes of only one-half of one percent from the previous year's applicable rate. The applicable rate will be that for the year in which construction of the facilities is initiated rather than the year in which construction funds are first appropriated. For deferred or unpaid annual expenses, the interest rate will be that applicable in the year in which the deficit is incurred.

The new formula will become effective on October 1, 1983.

FOR FURTHER INFORMATION CONTACT: Daniel M. Ogden, Jr., Director, Power Marketing Coordination, Department of Energy, Forrestal Building, Rm. 6B–104, 1000 Independence Avenue, SW, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Discussion

I. Introduction

In January 1970 the Department of the Interior adopted a policy for determining interest rates, unless otherwise provided by law, to be used for computing interest during construction and interest on the unpaid balance of the costs of new Federal power facilities properly allocated to commercial power development. This policy was expressed in and supplemented by implementation guidelines which also added the policy of charging interest on unpaid or deferred annual expense.

The present formula used to compute the applicable interest rate requires that the applicable rate is to be that used in the fiscal year in which funds are first appropriated for construction. The applicable rate is based on the yield rate computed by the Treasury Department as the average yield during the previous fiscal year on all outstanding interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more to maturity, adjusted to the nearest multiple of ⅛ of one percent. If the yield rate so computed does not differ from the applicable rate used by the PMAs for the previous fiscal year by more than ½ of one percent, then the applicable rate to be used by the PMAs shall be equal to the yield rate. If the yield rate computed differs from the applicable rate used by the PMAs for the previous fiscal year by more than ½ of one percent, the applicable rate to be used by the PMAs shall be the applicable rate for the previous year increased or decreased by ½ of one percent toward the yield rate.

By Notice published on February 9, 1983, at 48 FR 5989, the Department of Energy (DOE) invited public comment on a proposed change in the interest rate formula which would remove the ½ percent cap and make the applicable rate the rate used during the fiscal year in which construction was initiated. Written comments were solicited by April 9, 1983. At the request of several interested parties the comment period was extended an additional 30 days through May 9, 1983, by public notice published on April 29, 1983, at 48 FR 19460.

II. Discussion

Comments were received from seven (7) separate sources.

(a) One commenter fully supported the proposal on the basis that the changes are consistent with the requirement that the PMAs be operated in accordance with sound business principles.

(b) Another commenter stated that while it agrees that the proposed interest rate formula is appropriate for new facilities, it does not believe that it should apply to additions, betterments, and replacements because these are funded from revenues and it is considered improper to include interest on monies provided by the ratepayers for such purposes. In response to this comment, there is no change in the existing policy with respect to charging interest on additions, betterments and replacements. If they are repaid (or "expensed") in the same year in which they are installed, the typical net effect of the interest charge and the interest credit is that essentially no interest is assessed.

(c) Another commenter claims that the procedure being used to change the interest rate formula is improper, because it constitutes a rate adjustment, so that the DOE Rate Adjustment Procedures, 10 CFR Part 903, should be followed instead. In response to this comment we point out that because we expect the new policy to be followed across the board in all rate cases, it is not appropriate to review it on a case-by-case basis in individual rate cases.

(d) Another commenter considers the proposed change to be unresponsive to economic policies previously expressed by the Administration and out of step with other measures being taken to stabilize the economy, and is therefore tantamount to employing old inflationary factors. The commenter feels that the proposal in contrary to the intent of Congress; it appears to be a step toward selling Federal power at market rates; and, it will make it extremely difficult to employ cost-benefit analyses to new projects or additions to old projects.

In response we note that the proposed change is in accord with the Administration's policies to put the Government on a more businesslike footing and to reduce the deficit. It is not expected to have a significant impact on the Federal power rates, because the policy affects only the interest rates applicable to new facilities not provided for under existing law, and these would constitute a relatively small portion of the total Federal power investment yet unpaid. Moreover, the changes in interest rates are not limited to increases but include decreases as well. The ratepayers will benefit from these decreases as they occur rather than being delayed because of any cap placed on the change in interest rates.

The policy change is not contrary to the intent of Congress:

The policy adopted in 1970 was a self-imposed cap on the applicable interest rate and not one imposed by Congress. Thus, the policy is subject to change by proper administrative procedure. If Congress desires to provide a different interest policy, then the authorizing legislation will so state and will take precedence over the Departmental policy.

The proposed policy is not an attempt at establishing market rates because it deals with the recovery of a cost. Nor will it affect benefit-cost analyses of planned projects. The discount rate for project evaluation is set by law and serves a different function than the repayment interest rate.

(e) Another commenter had no problem with chaging the year of applicability, but would prefer no change in the interest rate cap or, if one is needed, no more than ¾ percent or 1 percent at best. It feels that any higher change would cause acceleration of inflation and possible serious fluctuations in interest rates.

In response, we recognize that the ½ percent cap was instituted originally to limit the impact of year-to-year interest rate changes. The policy, set in 1970, was to keep the interest rate from fluctuating up and down significantly, so long as the rate used was reasonably close to the actual yield rate which Treasury had to pay and thus would meet the Congressional mandate to recover costs. For the first ten years, the ½ percent cap did prevent unusual swings in interest rates, while at the same time keeping the applicable rate within close proximity to the Treasury yield rate. Since 1981, however, the cap has caused a growing spread between the interest rate being used by the power administrations and the yield rate being paid by Treasury. In fiscal 1983 the Treasury rate was 13 percent while the cap limited the power marketing repayment rate to 9.5 percent. The requirement of the law that the rates for power fully recover all costs has thus been defeated by the ½ percent cap in the past three years. Raising the cap to ¾ of a percent or even 1 percent, as the Power Rate Council originally recommended, will not correct the disparity in less than three years. Even though the cap was intended to serve a constructive administrative purpose in limiting swings of interest rates, it was not intended to frustrate the directive to recover costs. It thus must give way to the higher obligation of meeting the borrowing costs of the Treasury.

(f) Another commenter had four major comments on the proposed changes:

1. Since the largest source of Federal moneys is taxes, on which no interest is paid, rather than borrowings, it is not appropriate to charge interest on 100 percent of the unpaid Federal investment. The Department disagrees with this conclusion. The sale of power from Federal projects is a proprietary function, not a governmental function, which Congress has directed to be conducted in accordance with sound business principles. In performance of this proprietary function it is appropriate that the PMAs pay interest.

2. The change in the determinative date from the year of first appropriations to the year in which construction commences means that if an Administration seeks to maximize payments for Federal power projects, it need only concentrate commencement of construction during years of extraordinarily high interest rates. We believe this danger is more imagined than real. The political, budgetary and bureaucratic processes which lead to the initiation of construction are sufficiently rigid normally to prevent delay or acceleration of construction from one year to another. New facilities are normally for the interconnection and/or enhancement of existing projects. Additions and replacements are normally those required by an existing project to maintain reliability and to assure continuous service. Any delays in such construction would be of serious detriment to the project operations. We also note that the use of the year in which construction is initiated is not without Congressional precedent. See Section 5(f) of the Colorado River Storage Project Act of 1956, 43 U.S.C. 620d.

3. The elimination of the ½ percent cap will expose ratepayers to drastic changes in interest rates because of extraordinary increases in interest. It would shift the burden of high interest rates from the Government, which has some control over high interest rates, to the consumer, who has no control over high interst rates. If interest rates for a project are aberrationally high, the Government should reexamine those rates every five or ten years of a project's life and attribute to that project any subsequent lower yield rate.

As noted earlier, we do not anticipate that fluctuations in interest rates will have a significant impact on project power rates. Fluctuations can be down as well as up. Moreover, changes in interest rates of a project already constructed under authorizing legislation would require specific Congressional legislative action.

4. The commenter seeks assurance that the yield formula will be used only for projects which do not have a legislatively-determined interest rate or interest rate formula. In order to facilitate such assurance, the commenter urges the Department to publish in the **Federal Register** each project to which the yield formula is being applied at the time the interest rate is imputed to that project with an indication of the legislative authorization for such project.

In response we repeat that the policy applies only where the interest rate is not otherwise set by law. This determination is made for each project. When a rate proposal is submitted by a PMA, it is published in the **Federal Register** as part of the DOE Rate Adjustment Procedures, 10 CFR Part 903.

In the presentation of supporting documentation to the public and to the Federal Energy Regulatory Commission (FERC), the PMA will amply show all of the various interest rates being used and the justification for their use. It would be unnecessary duplication to publish these determinations separately in the **Federal Register.**

(g) The last commenter (OMB—Treasury) suggested that the interest rate should be adjusted annually where the project construction period extends beyond one year, and a weighted average interest rate should be determined for the entire construction period. The interest rate should be based on the average yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the project. The interest rate to be used should be the average yield determined for the last month of the previous fiscal year.

The commenter also suggested that the PMAs establish a fixed repayment (amortization) schedule for all new investments coming into service in FY 1984 and thereafter. The commenter strongly recommends that all of these changes be applied to the unpaid balance of existing investments.

In response to the suggestion to consider only those securities with maturities comparable to the reimbursement period of the project, we note that this does not appear to be feasible because it is almost impossible to find outstanding Federal obligations whose term to maturity is beyond 20 to 30 years, let alone 50 years. The method suggested of having several interest rates or a weighted average of rates over the construction period is somewhat beyond the published proposal and we believe it would be more appropriate to consider it separately. Likewise, the establishment of a fixed amortization schedule on all new investments goes beyond the scope

of this proposal and should be taken up at another time. Lastly, the application of the changes suggested by this commenter to the unpaid balance of existing investments would require amendment of previous legislation by the Congress and cannot be done administratively.

In view of the foregoing, notice is hereby given that beginning October 1, 1983, except as otherwise provided by law, the interest rate to be used by the Power Marketing Administrations for computing interest during construction and interest expense on the unpaid balance of the cost of Federal power facilities, the construction of which is initiated after September 30, 1983, which are financed with appropriations, and the cost of which is properly allocated to commercial power development, shall be the yield rate during the fiscal year in which construction is initiated; and the interest rate to be used in computing interest on unpaid or deferred annual expense shall be the yield rate. The yield rate is the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity. The average yield shall be computed as the average during the fiscal year of the daily bid prices. Where the average yield so computed is not a multiple of one-eighth of one percent, the yield rate shall be the multiple of one-eighth of one percent nearest to such average yield.

Issued at Washington, D.C., this 30th day of September, 1983.

Donald Paul Hodel,

Secretary of Energy.

[FR Doc. 83-27383 Filed 10-6-83; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

[BPA File No. ASC-1]

Reconsultation of Average System Cost Methodology; Request for Comments and Recommendations

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice and request for comments and recommendations.

SUMMARY: BPA hereby initiates a reconsultation process to revise the Average System Cost (ASC) methodology for sales of electric power made by utilities to BPA, pursuant to Section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act), 16 U.S.C. 839c(c). Future ASC filings will be required to comply with any revisions resulting from the reconsultation process.

The reconsultation is in response to the requests of customers and the Administrator's own perception that the present methodology needs revision. BPA is now in the initial stages of identifying issues that will be addressed in the reconsultation process.

Section I of this notice, Background, describes the general context of the current methodology. Section II, the Reconsultation Process, describes the procedural phases of the reconsultation. Section III, Issues, lists concerns with the current methodolgy that have been drawn to the attention of BPA. Comments are sought on these issues, and others which may not be included in the list, prior to publication of a proposed revised ASC methodology.

Responsible Official: Stephen A. Ailshie, Assistant Administrator for Financial Management, is the official responsible for development of a proposed revised ASC methology.

DATES: Written recommendations should be submitted by November 7, 1983.

ADDRESS: Submit written recommendations to Ms. Kathleen S. Johnson, Public Involvement Office, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Copies of the existing ASC methodology are available from the Public Involvement Office at this address.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen S. Johnson, Public Involvement Office, at the above address, 503-230-3478. Oregon callers outside of Portland may call toll-free on 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may call 800-547-6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager; Suite 288, 1500 Plaza Building, 1500 NE. Irving Street; Portland, Oregon 97232; 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager; Room 206, 211 East Seventh Avenue; Eugene, Oregon 97401; 503-687-6952.

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager; Room 561, West 920 Riverside Avenue; Spokane, Washington 99201; 509-456-2518.

Mr. George E. Eskridge, Montana District Manager; 800 Kensington; Missoula, Montana 59801; 406-329-3860.

Mr. Ronald K. Rodewald, Wenatchee District Manager; P.O. Box 741; Wenatchee, Washington 98801; 509-662-4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager; Room 250, 415 First Avenue North; Seattle, Washington 98109; 206-442-4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager; West 101 Poplar; Walla Walla Washington 99362; 509-525-5500, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager; 531 Lomax Street; Idaho Falls, Idaho 83401; 208-523-2706.

Mr. Frederic D. Rettemund, Boise District Manager; Owyhee Plaza, Suite 245; 1109 Main Street; Boise, Idaho 83707; 208-334-9138

Mr. Steven P. Cook, Chief; Branch of Allocation and Review, Routing DNR; P.O. Box 3621; Portland, Oregon 97208; 503-230-3084.

SUPPLEMENTARY INFORMATION:

I. Background

The Regional Act provides that whenever a Pacific Northwest electric utility offers to sell electric power to BPA at its average system cost of resources, BPA shall purchase such power and, in return, shall offer to sell an equivalent amount of power to the utility for resale to that utility's qualifying residential and farm consumers. 16 U.S.C. 839c(c)(1). The Regional Act also requires that the BPA Administrator, in consultation with the Northwest Power Planning Council, BPA's customers, and appropriate State regulatory bodies, develop a methodology to determine ASC. 16 U.S.C. 839c(c)(7). This methodology is subject to review and approval by the Federal Energy Regulatory Commission (FERC). *Id.*

Following completion of an initial consultation process pursuant to the Regional Act, 16 U.S.C. 839c(c), BPA developed a proposed ASC methodology which was approved on an interim basis by the FERC on October 14, 1981. 46 FR 50,517 (1981) (corrected at 46 FR 55,952 (1981); 18 CFR 35.13a(d) (1983). Basically, the interim methodology defines ASC as a utility's production and transmission costs, less any costs specifically excluded by provisions of the Regional Act, divided by a utility's energy load. The ASC methodology generally utilizes the investment, operating cost, and load data approved by the state regulatory authority or other body authorized to establish retail electric rates for that utility. Upon request, BPA will provide copies of the text of the ASC methodology including Schedules 1-6.

Since its effective date, the parties to the initial consultation process have had the opportunity to gain experience under

the ASC methodology and to identify problems with its implementation. Section VI of the methodology, 18 CFR 35.13a(d)(6) provides:

> The Administrator, at his or her discretion, or upon written request from three-quarters of the utilities who are parties to contracts pursuant to section 5(c) of the Regional Act, or from three-quarters of his preference customers, or from three-quarters of Bonneville's direct-service industry customers, shall initiate a consultation process as provided for in section 5(c) of the Regional Act. After completion of this process, the Administrator may propose a new ASC methodology, provided that any consultation process may not be initiated sooner than 1 year after the immediately previous ASC methodology has been adopted by Bonneville and approved by the FERC.

Consistent with this section, the Administrator, in his discretion and upon request from three-quarters of his direct-service industry customers, hereby initiates a consultation process to propose a new ASC methodology. Also consistent with this section, the new consultation process has been initiated no sooner than 1 year after the previous methodology was adopted by BPA on August 26, 1981, and approved by the FERC on October 14, 1981. See 46 FR 50, 517 (1981), corrected at 46 FR 55,952 (1981). Although the FERC approval was granted on an interim basis, this action satisfies the requirements of 18 CFR 35.13a(d)(6).

II. The Reconsultation Process

The reconsultation process has begun with publication of this notice. Interested parties may comment upon this notice until November 7, 1983. Comments should include: (1) A statement of position on the issues listed in this notice, and (2) an explanation of additional issues that should be considered. Following the submission of comments, BPA will review such comments and publish a proposed average system cost methodology.

BPA will then accept written comments on the proposed methodology. Where parties have substitute language for the methodology, such language should be included in the comments. BPA will then accept written reply comments. Following the receipt of these comments, BPA will afford parties the opportunity for oral presentations or negotiations, as appropriate. Negotiated agreements may be entered into the record.

The Administrator will issue a written draft methodology based on the record of the reconsultation process. Following publication of the draft methodology, BPA will accept a second round of written comments. After BPA reviews the comments, the Administrator will issue the new methodology and a Record of Decision.

III. Issues

The following issues have been identified for comment:

1. Should the parties continue with the current approach in the methodology of allowing jurisdictionally approved costs (ratemaking approach), or adopt a Regional approach in determining the ASC.
2. Should benefits be offered only for production costs or for both production and transmission?
3. Should radial transmission costs continue to be excluded from the ASC calculation?
4. Should benefits for conservation continue to be limited to those conservation acquisitions for which the utility has not been compensated? Should the conservation contract charge continue to be exchangeable?
5. Should BPA: (a) Continue to accept a state commission's determination of rate of return, (b) use the utility's actual earned rate of return over a specified period, (c) disallow inclusion of a rate of return on equity but allow it on debt, (d) apply a predetermined formula to calculate rate of return, or (e) allow differential rates of return by function?
6. Should BPA, in order to create consistency among utility filing, disallow the inclusion of: (a) Income taxes, (b) other taxes, or (c) develop a standard method for their calculation and functionalization?
7. Should BPA require utilities to directly functionalize: (a) All costs, (b) all costs except with certain exceptions, or (c) apply standardized formulas such as labor ratios?
8. Should BPA clarify the ASC treatment of situations where a utility does not project a New Large Single Load in a test year and later a New Large Single Load materializes?
9. Should BPA be allowed a longer period of time to complete the review of an ASC report, rather than the 120 calendar days (of which regional power sales customers have 100 calendar days for comment) as the current methodology provides?
10. Should BPA modify the 5 working day requirement for the submittal of the preliminary and reconciled ASC filings?
11. Should be utility be required to file a copy of its FERC filing with BPA?
12. Should BPA be accorded automatic party status in FERC filings?
13. Shoud BPA clarify the ASC filing requirements as to submittal location, number of copies, or customer lists?
14. Should BPA modify the ASC methodolgy to allow the ASC to be synchronized in time with the Priority Firm Rate?
15. How should the Exhibit C schedules be make more administratively efficient?
16. How should the distribution losses in the ASC filings and the ASC invoices be calculated: (a) Should the detemination of losses be standardized, (b) should the existing loss calculation be simplified?
17. Should BPA clarify the definition of residential loads to be used in determining ASC?

Issued in Portland, Oregon, on September 29, 1983.

Peter T. Johnson,

Administrator

[FR Doc. 83-27447 Filed 10-6-83; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Fletcher Oil and Refining Co., Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken on consent order with Fletcher Oil and Refining Company, Inc.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces that it has adopted a Consent Order with Fletcher Oil and Refining Company, Inc. as a final order of the Department.

EFFECTIVE DATE: August 1, 1983.

FOR FURTHER INFORMATION CONTACT: John M. Daley, Esq., Deputy Chief Counsel, San Francisco Office, Economic Regulatory Administration, Department of Energy, 333 Market Street (Sixth Floor), San Francisco, California 94105; (415) 974-7114.

SUPPLEMENTARY INFORMATION: On March 18, 1983, the ERA published a notice in the **Federal Register** that it had executed a proposed Consent Order with Fletcher Oil and Refining Company, Inc. (Fletcher) which would become effective no sooner than thirty (30) days after publication of that notice. 48 FR 11487. Pursuant to 10 CFR 205.199J (c), interested persons were invited to submit comments concerning the terms and conditions of the proposed Consent Order.

The Consent Order provides that in settlement of certain potential civil liability arising out of the Mandatory Petroleum Price and Allocation Regulations, 10 CFR Parts 205, 211, and 212, in connection with the reporting of entitlements obligations and the sale of

refined petroleum products during the period August 19, 1973 through January 27, 1981, Fletcher shall remit a total of $2,800,000 to DOE in twenty quarterly installments, plus interest on the unpaid balance. The **Federal Register** notice also specified that DOE would undertake to determine the proper disposition of the refund amounts.

Six comments were received by the April 18, 1983 deadline, and two thereafter. All comments received were considered by ERA. Six of the comments were from officials of State agencies and two were from resellers of petroleum products who purchased refined petroleum products from Fletcher. One of the resellers suggested that the Consent Order should be modified to provide for refunds to large volume purchasers, that interest should be accrued on the settlement amount from the date of the overcharges, and that the settlement amount should be increased to at least $10 million. The other reseller suggested that the Consent Order should be modified to specify that the refund amounts be distributed in a proceeding under the procedures set forth in 10 CFR Part 205, Subpart V. The State commenters did not object to the Consent Order. They suggested, however, that the refund amounts should be distributed to the States. Three of the commenters, citing the decision of the Temporary Emergency Court of Appeals in *Citronelle-Mobile Gathering, Inc. v. Edwards*, 669 F. 2d 171 (1982) (*Citronelle*), suggested that it would be unlawful to deposit any of the funds received in the United States Treasury. ERA has considered these comments and has determined that the Consent Order should be made final without modification.

With respect to the suggestion that the Consent Order settlement amount is insufficient, ERA determined that the settlement amount is sufficient. This determination is based upon the amount and nature of the alleged regulatory violations by Fletcher.

The suggestion that the Consent Order should provide for the accrual of interest on the settlement amount from the date of the overcharges is apparently based upon a misconception concerning both the nature of the Consent agreement and the nature of the settlement amount which was agreed to by the parties. First, a Consent Order does not constitute an admission that overcharges occurred. Second, the settlement amount here represents ERA's judgement of an acceptable recovery in light of Fletcher's alleged violations, *including* interest from the date of the subject transactions. As noted in the Consent Order itself at paragraph 402, the principal settlement amount includes interest through the effective date of the Consent Order Thus, pre-settlement interest has been incorporated in the settlement.

As noted above, some commenters stated that the terms of the proposed Consent Order should provide for refunds to be made to specified customers of Fletcher or that the settlement funds should be distributed through a Subpart V proceeding before the Office of Hearings and Appeals (OHA). ERA feels that the terms of the proposed Consent Order need not specify that refunds be made to particular customers or that the proceeds be distributed through a Subpart V proceeding. ERA has not as yet determined which remedy or remedies to employ in this case. In formulating a distribution plan, ERA will consider all available administrative remedies including those suggested in the comments. In any event, no remedy is precluded by the adoption of the Consent Order as a final DOE order.

Having considered all comments received, therefore, ERA has determined that the proposed Fletcher Consent Order should be made final without modification, and so informed the company by letter dated August 1, 1983.

Issued in Washington, D.C. on the 24th day of August 1983.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 83-27451 Filed 10-16-83; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-83-023; FC Case No. 50782-9093-01, 02-11]

Powerplant and Industrial Fuel Use; Detroit Edison Co.; Acceptance of Petition

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition for a Temporary Public Interest Exemption and Availability of Certification; Detroit Edison Company.

SUMMARY: On September 19, 1983, the Detroit Edison Company (DEC) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a temporary public interest exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") for two auxiliary boilers to be constructed at its Belle River Power Plant, near St. Clair, Michigan.

Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA were published in the **Federal Register** at 46 FR 59872 (December 7, 1981) (10 CFR Parts 500, 501, and 503). Eligibility and evidentiary requirements governing the temporary public interest exemption are contained in 10 CFR 503.25.

The units for which the petition was filed are two oil-fired auxiliary boilers, each with a design heat input rate of 215 million Btu/hr, which are to be used under the requested exemption during the construction of DEC's Belle River Power Plant. From October 1983 until December 1984, the boilers will be used to provide plant heating as well as testing and start-up of the main boiler Unit No. 1 and other facility systems.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m. to 4:00 p.m.

ERA will issue a final order granting or denying the petition for temporary exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments and any requests for a public hearing are due no later than November 21, 1983.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing are to be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-033, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585. Docket No. ERA-FC-83-023 should be printed on

the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-033, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202) 252-1316

Marya Rowan, Office of General Counsel, Department of Energy, Forrestal Building, Room 6B-235, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202) 252-2967

SUPPLEMENTARY INFORMATION: DEC plans to install two new auxiliary boilers to support the construction and operation of a 1300 megawatt coal-fired electric powerplant presently under construction at its Belle River Plant near St. Clair, Michigan. These units will provide space heat for the plant site and start-up functions for United 1 of the main coal-fired facility during the requested exemption period, October 1983 to December 1984. At the end of the requested exemption period the oil-fired boilers will remain operational in a support function as permited by 10 CFR 500.2. (During operation of the coal-fired facility, the oil consumed by the auxiliary boilers for unit ignition, start-up, flame stabilization, testing, and other control purposes will not exceed twenty-five percent (25%) of the total annual Btu heat imput of the auxiliary units and the electric powerplant. Under the definition of "primary energy source" in 10 CFR 500.2, the use of this amount of oil for these purposes, is not prohibited by the Act. See *Associated Electric Cooperative, et al.*, Interception 1980-42 (45 FR 82572 (December 15, 1980)).) Such use is not prohibited by FUA; accordingly, the petitioner is not requesting a permanent exemption.

The final rules provide, at § 503.25(c), a certification alternative to the filing of a more lengthy exemption petition when the use of oil or natual gas is to be in conjunction with (and during) the construction of alternate fuel-fired units. In accordance with that section, DEC certified to ERA that the auxiliary boilers will be operated on oil only during the construction and bringing into service of Unit No. 1, a 650 megawatt coal-fired electric powerplant at the Belle River Power Plant, and that other future use of oil in the units will not be subject to FUA prohibition. Accordingly, the period of the requsted exemption is from October 1983 to December 1984.

In accordance with the evidentiary requirements of § 503.25(c), DEC also included as part of its petition exhibits containing the basis for the certifications described above.

Pursuant to 10 CFR 501.3, ERA hereby accepts DEC's petition for a temporary public interest exemption. ERA retains the right, however, to request additional relevant information from DEC at any time during the pendency of these proceedings. As provided in § 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that DEC is entitled to the exemption requested. That determination will be based on the entire record of these proceedings, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on September 29, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 83-27452 Filed 10-6-83; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-83-016; FC Case No. 67048-9238-01-12]

Powerplant and Industrial Fuel Use; Shepherd Oil; Order Granting Exemption

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order Granting to Shepherd Oil, Incorporated an Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUBJECT: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a temporary public interest from the prohibition of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA or "the Act") to Shepherd Oil, Incorporated (Shepherd). The temporary exemption permits the use of natural gas as the primary energy source in a new boiler to be constructed at its Ethanol Production Plant in Jennings, Louisiana, for a period not to exceed five years, during which time Shepherd will construct a coal-fired facility to supply the required steam to the ethanol plant. The final exemption order and detailed information on the proceeding is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order shall take effect on December 6, 1983 (section 702(a), FUA). The temporary exemption granted in the order shall extend five calendar years from the date the unit is placed in service.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-033, 1000 Independence Avenue, SW., Washington, DC 20585, Phone (202) 252-1316

Marya Rowan, Office of General Counsel, Department of Energy, Forrestal Building, Room 6B-235, 1000 Independence Avenue, SW., Washington, DC 20585, Phone (202) 252-2967

SUPPLEMENTARY INFORMATION: On August 2, 1983, Shepherd petitioned ERA under section 211(c) of FUA and 10 CFR 503.25 for a temporary public interest exemption to permit the use of natural gas as the primary energy source in a new 140 MM/Btu/hr natural gas-fired boiler to be used to provide steam for its Ethanol Production Plant in Jennings, Louisiana. The temporary exemption which ERA has granted extends from the effective date of this order for five calendar years.

Basis for Temporary Exemption Order

The temporary exemption order is based upon evidence in the record including Shepherd's certification to ERA, in accordance with 10 CFR 503.25(c), that the natural gas-fired boiler will be operated only during the construction and successful testing of a coal-fired boiler to be owned and operated by Shepherd; and that at the end of the temporary exemption period covered by this order, Shepherd will be in compliance with the prohibition of FUA.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of the Petition and Availability of Certification in the **Federal Register** on August 12, 1983 (48 FR 36645), commencing a 45-day public comment period.

Copies of the petition were provided to the Environmental Protection Agency and to the Federal Trade Commission for comments as required by section 701 (f) and (g) of the Act. During the comment period, interested persons were also afforded an opportunity to request a public hearing. The comment period closed on September 26, 1983; no comments were received and no hearing was requested.

NEPA Compliance

Under section 763 of FUA, the grant of a temporary exemption to a major fuel burning installation is not deemed to be a major Federal action for purposes of

section 102(2)(C) of the National Environmental Policy Act of 1969.

Order Granting Temporary Public Interest Exemption

Based upon the entire record of this proceeding, ERA has determined that Shepherd has satisfied the eligibility requirements for the requested temporary exemption, as set forth in 10 CFR 503.25. Therefore, pursuant to section 211(c) of FUA, ERA hereby grants a temporary public interest exemption to Shephert to permit the use of natural gas in one new natural gas-fired boiler at the Ethanol Production Plant in Jennings, Louisiana, for up to five calendar years from the date the unit is placed in service.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, D.C. on September 29, 1983.

Robert L. Davies,

Director, Fuels Conversion Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-27453 Filed 10-6-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP83-511-000]

K N Energy, Inc.; Request Under Blanket Authorization

October 3, 1983.

Take notice that on September 15, 1983, K N Energy, Inc. (KN), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP83-511-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that KN proposes to reassign natural gas volumes and consolidate the authorized contract demand between two delivery points for Midwest Energy, Inc. (Midwest) under authorization issued in Docket Nos. CP83-140-000 and CP83-140-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

KN proposes a reassignment of the gas volumes and consolidation of the authorized contract demand for gas delivered to Midwest at two existing delivery points located at WaKeeney and Toulon, Kansas. KN states that it is presently authorized to deliver gas in the contract demand amounts of 13,775 Mcf at WaKeeney and 4,125 Mcf at Toulon. It is submitted that Midwest has requested the consolidation of the two delivery points under one total authorized contract demand of 17,900 Mcf. It is indicated that this consolidation would help Midwest maintain more even line pressures and allow for more efficient system operation during high demand periods.

KN states that there would be no change in the total contract demand applicable to gas delivered to Midwest associated with the gas volume reassignment. The total contract demand volumes delivered to Midwest after the request would not exceed the total contract demand volumes authorized prior to the request, it is submitted.

Any person on the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rule (18 CFR 385-214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27415 Filed 10-6-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-49-000]

Natural Gas Pipeline Company of America; Complaint and Petition for Declaratory Order

October 4, 1983.

On August 31, 1983, the Natural Gas Pipeline Company of America (Natural) filed a complaint with the Federal Energy Regulatory Commission (Commission) against actions taken by John A. Masek, Kelly Masek, John A. Masek, Jr., Alfred T. Curlee, Herbert T. Koch, BBI Company, and Wicherley, Ltd. (hereinafter referred to jointly as "Respondents"), in connection with the sale of gas from the Bunker Hill Field, located in Carbon County, Wyoming, pursuant to the 18 CFR 385.206-385.207 of the Commission's Rules of Practice and Procedure (Rules 206 and 207).

Natural alleges that Respondents are in violation of the provisions under the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (Supp. V 1981) (NGPA) or, alternatively, the Natural Gas Act 15 U.S.C. 717 *et seq.* (NGA).

Natural states that it purchased gas from the Bunker Hill field under gas purchase contracts executed with Respondents on August 18, 1978. This sale for resale is in interstate commerce and is subject to the Commission's NGA jurisdiction. Natural further states that the subject gas purchase contracts contain a prepayment provision whereby Natural was to begin monthly payments to each Respondent Seller for Respondent Seller's interest in such quantities of gas Respondent had available for delivery 60 days after the execution of the contract, if Natural was not able to receive such gas. Natural has the right to "make up" deficiency purchases under the subject gas purchase contract by taking gas in excess of the "contract volume" during the next succeeding five year period.[1] The price to be paid for the makeup gas is the difference, if any, between the price in effect at the time the gas is taken and the price previously paid for the gas not taken.

Natural states that as of August, 1983, there are 791,485 Mcf of gas paid for but not taken, representing $1,249,704 in prepayments. Production under the contract is expected to end by June 1984. Natural is not aware of any future plans by Respondents to drill additional wells or any other recoverable gas reserves subject to the contract. Natural estimates that once production ceases, Respondents will have collected $1,235,460 in prepayments for approximately 782,485 Mcf of gas which was never delivered.[2]

Natural avers that the prepayment provision in the subject contract between Natural and Respondents results in Respondents receiving and demanding payments "which when divided by those volumes of gas which have been and will be actually delivered under the contract" exceed the NGPA maximum lawful prices. Natural further alleges that the prepayment provisions of the subject contract are unjust and unreasonable and in violation of sections 4 and 5 of the NGA. Furthermore, Natural alleges that such

[1] The contract provides further that in the event production from seller's wells are unable to meet Natural's request for make-up gas in addition to the contract quantity, "* * * Pipeline shall have additional time as is necessary to receive such makeup gas."

[2] Natural avers that it has attempted to renegotiate the terms of the subject contract to provide for greater make-up of Natural's prepayments, but Respondents have refused such attempts.

payments are illusory in that Natural is unable to receive gas that it has already paid for.[3] Natural states it will be physically unable to make-up any significant amount of the prepayments.

Natural requests that the Commission take jurisdiction over its complaint and the matters alleged therein; that the Commission find and determine that Respondents have received and will continue to receive more than the maximum lawful permitted under the NGPA, or alternatively that such payment would also constitute a violation of sections 4, 5, and 21 of the NGA; and that upon so finding, the Commission order Respondents to make refunds with respect to certain unrecoverable prepayments. Natural also requests that the Commission issue a declartory order stating: (1) That receipt by Respondents of certain payments withheld by Natural (see n. 3 *supra*) would violate the NGPA and NGA and (2) that Respondents are obligated to repay certain prepayments made by Natural (less the amount withheld) under the prepayment provisons of the contract which are as yet and will be unrecouped.

Any person desiring to be heard to to make any protest to this complaint should file, within 30 days after notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27407 Filed 10-6-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-1-37-001; PGA84-1]

Northwest Pipeline Corporation; Change in Tariff

October 3, 1983.

Take notice that on September 15, 1983, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance Substitute Eleventh Revised Sheet No. 10 to its First Revised Volume No. 1 Tariff.

Northwest states that, as more fully explained in the instant filing, Substitute Eleventh Revised Sheet No. 10 will correctly state the Purchased Gas Cost Component of the commodity rates for the period October 1, 1983, through March 31, 1984 pursuant to Northwest's Stipulation and Agreement in Settlement at Docket No. RP82-56-000. The proposed tariff sheets would result in an increase in the Account No. 191 charges which are flowed through to Northwest's customers.

Northwest request waiver of § 154.22 and special permission under § 154.51 in order to permit the effective date of October 1, 1983, for the tendered tariff sheets. October 1, 1983 is the same date as requested by Northwest in its August 15, 1983 PGA filing.

A copy of this filing has been served on all of Northwest's jurisdictional sales customers and affected state commissions.

Any persons desiring to be heard or to protest said filing 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 Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before October 7, 1983. 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. 83-27416 Filed 10-6-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-504-000]

Southwest Gas Corporation; Application

October 4, 1983.

Take notice that on September 12, 1983, Southwest Gas Corporation (Applicant), P.O. Box 15015, Las Vegas, Nevada 89114, filed in Docket No. CP83-504-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the sale of natural gas for resale to Mohave Gas Trust (Mohave) and (2) the sale of natural gas to Pataya Storage Company (Pataya) for fuel, if the Commission deems such a sale jurisdictional under the Natural Gas Act, all as more fully described in the application that is on file with the Commission and open for public inspection.

Applicant states that its proposed sale to Mohave, a trust of which Applicant is trustor and beneficiary, is necessary to provide a cost-effective means of financing the gas inventory proposed to be stored by Applicant in the proposed storage facility of Pataya.[1] Applicant states that it would sell to Mohave gas, surplus to its system requirements, which would be injected into Pataya's proposed storage facility and resold to Applicant when required by Applicant. Applicant states that sales to Mohave would be made at actual incurred cost, according to the terms and conditions set forth in the proposed *pro forma* Gas Sales Agreement, to be filed as Applicant's FERC Gas Tariff Original Volume No. 2, Rate Schedule X-2.

Applicant states that its proposed sale to Pataya would be for fuel use in operating compressors, dehydrators and other facilities as well as for space heating of plant facilities. Applicant states that Pataya would receive the fuel gas at the proposed Mohave County, Arizona, interconnection of Pataya's proposed pipeline and El Paso's main transmission pipeline. Pataya would inject volumes purchased for fuel use into its proposed storage facility and withdraw the gas for consumption as necessary. Consequently, the fuel gas proposed to be sold to Pataya by Southwest would be commingled in Pataya's proposed facilities with storage volumes that may eventually be withdrawn from storage and transported to Applicant's distribution operation in southern Nevada and Arizona.

Applicant submits that the proposed sale to Pataya is a direct sale not subject to regulation under the Natural Gas Act. However, if the Commission determines that the proposed sale to Pataya is subject to the Commission's jurisdiction, Applicant requests that it be issued a certificate of public convenience and necessity authorizing the sale.

Applicant states that it would sell gas to Pataya for fuel use at its actual incurred cost according to the terms and conditions set forth in Applicant's proposed *pro forma* FERC Gas Tariff, Original Volume No. 2, Rate Schedule X-3.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 25, 1983, file with the Federal Energy Regulatory Commission, Washington,

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[3] Natural states that it has withheld certain payments totaling $294,934.63 from Respondents in an effort to recoup its prepayments.

[1] By order dated December 3, 1982, the Commission consolidated Pataya's application in Docket No. CP80-581-000/001, with the related application of El Paso Natural Gas Company (El Paso) in Docket No. CP81-308-000 and set both applications for formal evidentiary hearing.

D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27409 Filed 10-6-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP70-7-025]

Southern Natural Gas Company; Petition To Amend

October 3, 1983.

Take notice than on August 31, 1983, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP70-7-025 a petition to amend the order issued October 29, 1969,[1] in Docket No. CP70-7-000 pursuant to Section 7(c) of the Natural Gas Act so as to authorize the consolidation of two delivery points in Trussville, Alabama, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

Southern states that it was authorized by the order issued October 29, 1969, to deliver a contract demand of 16,000 Mcf of natural gas per day to the Utilities Board of Trussville, Alabama (Trussville), delivering 13,600 Mcf at the Huffman delivery point and the remaining 2,400 Mcf at the Trussville area delivery point, which is comprised of Meter Station Nos. 1 and 2. Since these deliveries commenced, Southern states that Trussville has modified its distribution system so as to be able to serve its customers through either delivery point. Southern proposes herein to deliver 16,000 Mcf of gas per day at the Tressville area delivery point, to delete the Huffman delivery point and to designate the receiving station at the Huffman delivery point as Meter Station No. 3 at the Trussville area delivery point.

Southern asserts that the proposed amendment would not change the contract demand delivered to Trussville, would not have an adverse impact on deliveries to customers of Trussville or Southern and would not require construction of new facilities.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Oct. 24, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27421 Filed 10-6-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-495-000]

United Gas Pipe Line Company; Request Under Blanket Authorization

October 4, 1983.

Take notice that on September 2, 1983, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP83-495-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that United proposes to abandon by sale to the Mobile Gas Service Corporation (Mobile) approximately 4,340-feet of 2-inch pipeline, and to construct and operate a sales tap for the continued delivery of natural gas to its local area distributor under the authorization issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United indicates that Mobile, a local distributor customer, presently serving the two residential customers has consented to the abandonment. United also states that the customers would not be abandoned, as Mobile would continue to serve such customers efficiently.

Also, United proposes the construction and operation of a sales tap which would be operated from an existing tap located at the intersection of United's 14-inch Jackson-Mobile line. This tap would be utilized to deliver 50 Mcf of natural gas per year for residential use, it is states. United asserts that the proposed tap would not increase Mobile's contractual maximum daily quantity, not its entitlement under United's effective curtailment plan. Gas flowing through this tap would be sold under United's DG-N Rate Schedule, it is stated.

Cost of the sale of facilities to Mobile is estimated to be $10.00.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27412 Filed 10-6-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-503-000]

United Gas Pipe Line Company; Request Under Blanket Authorization

October 4, 1983.

Take notice that on September 9, 1983, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP83-503-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that United proposes to construct and operate a sales tap under authorization issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to construct and operate a 1-inch sales tap on its existing 14-inch Bruni-Comal line in Duval County, Texas. United avers that the proposed tap would provide gas deliveries of approximately 100 Mcf annually to Entex, Inc. (Entex), an existing customer, which would in turn provide gas service to Roger S. Elliott for the commercial use of a small irrigation operation. It is submitted that there would be no increase in the distributor's contractual MDQ nor its entitlement under United's effective curtailment plan. United further states that it would provide this service pursuant to its Rate Schedule DG-S.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27413 Filed 10-6-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-505-000]

United Pipe Line Company; Request Under Blanket Authorization

October 4, 1983.

Take notice that on September 12, 1983, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP83-505-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that United proposes to abandon the Mobile, Alabama, City Gates Nos. 1, 2, and 3 together with the appurtenances and laterals and to construct and operate measuring and regulating facilities in order to establish a new single delivery point through which Mobile Gas Service Corporation (MGSC), a distributor customer, can continue to service the City of Mobile and eight direct industrial customers for the account of United under the authorization issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests on file with the Commission and open to public inspection.

United states that MGSC has agreed to the proposed abandonment. It is also stated that service to the eight direct industrial customers remains unchanged as their delivery points and gas volumes remain the same. No impact on United's existing service requirements is anticipated, it is asserted.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27414 Filed 10-6-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-53-000]

Natural Gas Policy Act; Oklahoma Corporation Commission and Ladd Petroleum Corp.; Toews B No. 1 Well, FERC J.D. No. 81-27360; Petition To Reopen and Vacate Final Well Category Determinations and Request To Withdraw

October 4, 1983.

On September 6, 1983, Ladd Petroleum Corporation (Ladd) filed with the Federal Energy Regulatory Commission (Commission) a request that its application for the determination that natural gas from the Toews B #1 Well qualifies as stripper well natural gas pursuant to section 108 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. V 1981), be withdrawn. An affirmative determination on the application was made by the Oklahoma Corporation Commission (Oklahoma), and became final on June 11, 1981, pursuant to NGPA section 503(d) and 18 CFR 275.202(a).

Ladd states that its section 108 filing was made based on residue volumes measured at the plant tailgate.

Ladd asserts that it collected the NGPA section 108 rate for the period of August 1980 through June 1981. On September 18, 1981, Ladd filed a petition seeking clarification of the Commission's regulations to determine whether qualification as a stripper well under section 108 may be based on the measurement of residue volumes of gas at the plant tailgate after the production of natural gas liquids, including reduction of wellhead volumes used as plant and compressor fuel. Effective July 1, 1981, Ladd suspended collection of the NGPA section 108 rate for wells that would disqualify under § 27.804(a)(2) if volumes of gas used as plant and compressor fuel were ultimately determined to be included in calculating volumes of production under section 108 pending action on Ladd's petition. The Commission in an order issued July 22, 1983 in Docket No. GP83-2-000 denied Ladd's petition. Production from the subject well show that it exceeds the allowable production of 60 Mcf per day provided in NGPA section 108. Ladd states that refund of the section 108 payments in excess of the otherwise applicable section 104 rate, including interest, was made to the purchaser on August 1, 1983. Ladd states that a refund report will be filed, on the referenced well, along with the other wells affected by the Commission order issued July 22, 1983.

The Commission hereby gives notice that the question of whether refunds plus interest, as computed under § 154.102(c) will be required is a matter which is subject to review and final determination of the Commission.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should file, within 30 days after this notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of Rules 214 or 211 of the Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27410 Filed 10-6-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-54-000]

Oklahoma Corporation Commission and Union Texas Petroleum; Crosswhite-Duncan No. 2 Well, FERC J.D. No. 83-38899; Petition To Reopen and Vacate Final Well Category Determinations and Request To Withdraw

October 4, 1983.

On August 29, 1983, Union Texas Petroleum, (Union Texas) filed with the Federal Energy Regulatory Commission (Commission) a copy of its request to the Oklahoma Corporation Commission (Oklahoma) that its application for the determination that natural has from the Crosswhite-Duncan #2 Well qualifies as stripper well natural gas pursuant to section 108 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. V 1981), be withdrawn. An affirmative determination on the application was made by Oklahoma, and became final on July 10, 1983, pursuant to NGPA section 503(d) and 18 CFR 275.202(a).

Union Texas states that its section 108 filing was made based on the best information available at the time, but it has since been discovered that the Crosswhite-Duncan #2 Well had been temporarily abandoned at the time of the application. Union Texas further states that it has not collected any section 108 stripper prices for this well's production.

The Commission hereby gives notice that the question of whether refunds plus interest, as computed under § 154.102(c) will be required is a matter which is subject to the review and final determination of the Commission.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should file, within 30 days after this notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of Rules 214 or 211 of the Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27411 Filed 10-6-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-426-000]

Greenwood Mills, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 4, 1983.

On September 13, 1983, Greenwood Mills, Inc., (Applicant) of 104 Maxwell Avenue, Greenwood, South Carolina 29648-1017, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle cogeneration facility will be located at the Applicant's Liner Plant on U.S. Highway 21 south of Orangeburg, South Carolina. The primary energy source for the facility will be coal. The electric power production capacity of the facility will be 5,900 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status 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 rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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. 83-27405 Filed 10-6-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-423-000]

Kern River Cogeneration Company; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 4, 1983.

On September 12, 1983, Kern River Cogeneration Company, (Applicant) of Route 1, Box 197-X, Bakersfield, California 93308, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle cogeneration facility will be located in the Kern River Oil Field in Kern County, California. The primary energy source for the facility will be natural gas, and low sulfur distillate fuel oil will be used as a backup fuel. The electric power production capacity of the facility will be 300 megawatts. Southern Sierra Energy Company, a wholly owned subsidiary of the Southern California Edison Company, owns a 50 percent equity interests in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publicaiton of this notice and must be served on the applicant. 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. 83-27406 Filed 10-6-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-412-000]

Owen-Illinois, Inc.-Orange Facility; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 3, 1983.

On September 6, 1983, Owens-Illinois, Inc., (Applicant) of One Sea Gate, Toledo, Ohio 43666, filed with the Federal Energy Regulatory Commission (Commission) and application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle cogeneration facility is located at the Applicant's pulp and paper linerboard mill in Orange, Texas. The primary energy source for the facility is biomass. The electric power production capacity of the facility is 32.5 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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. 83-27417 Filed 10-6-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-415-000]

Pelican Management Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 3, 1983.

On September 6, 1983, Pelican Management Inc. (Applicant) of 330 West 58th Street, New York, New York 10019, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle cogeneraton facility will be located at Seagirt Boulevard in Far Rockaway, New York. The facility will consist of two internal combustion engines with waste heat recovery equipment. The primary energy source for the facility will be diesel fuel. The electric power production capacity of the facility will be 628 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status 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 rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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. 83-27418 Filed 10-6-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-406-000]

Piru Creek Solar-Hydro, A California Limited Partnership; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

October 3, 1983.

On August 29, 1983, Piru Creek Solar-Hydro, A California Limited Partnership, (Applicant), c/o Fluid Energy Systems, Inc., 210 Wilshire Boulevard, #699, Santa Monica, California 90403, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The small power production facility will be located along Piru Creek in Ventura County, California. The facility will consist of a hydropower dam, a powerhouse, a buried pipeline/penstock system, and a solar powered pumping system. The electric power production capacity of the facility will be 1,965 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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. 83-27419 Filed 10-6-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-418-000]

Prest Enterprises, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 3, 1983.

On September 8, 1983, Prest Enterprises, Inc., (Applicant) of 468 Plum Avenue, P.O. Box 7065, Memphis, Tennessee 38107-0065, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle cogeneration facility will be located 468 Plum Avenue in Memphis, Tennessee. The primary energy source for the facility will be biomass in the form of wood waste. The electric power production capacity of the facility will be 200 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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. 83-27420 Filed 10-6-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-330-000]

South Fork Hydroelectric Association; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

October 4, 1983.

On June 27, 1983, South Fork Hydroelectric Association, Suite 2320, 3435 Wilshire Boulevard, Los Angeles, California 90010 (Attn: Carl G. Allen, Proprietor), filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be a 4,950 kW hydroelectric installation located near Onyx in Kern County, California. The facility will consist of a diversion structure on the South Fork Kern River, an 8,500 foot conduit, a powerhouse, and a 13.8 kV transmission line approximately 2.75 miles long.

Any person desiring to be heard or objecting to the granting of qualifying status 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 rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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. 83-27408 Filed 10-6-83; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Objection to Proposed Remedial Order Filed; Period of August 29 through September 9, 1983

During the period of August 29 through September 9, 1983, the notice of objection to a proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

September 29, 1983.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

Sound Refining, Inc., Tacoma, Washington, HRO-0189, Crude Oil

On September 6, 1983, Kalama Chemical, Inc. of Kalama, Washington, and Kenneth Cory, Controller of the State of California, each filed a Notice of Objection to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration of the Department of Energy issued to Sound Refining, Inc. (Sound), presently a subsidiary of Crysen Corporation of Santa Ana, California, on July 20, 1983. The PRO charges Sound with entitlements violations in connection with Sound's participation in the Entitlements Program during the reporting period August 1976 through May 1977.

According to the PRO the Sound violations totalled $2,752,804.79 plus interest.

[FR Doc. 83-27454 Filed 10-6-83; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Week of September 12 Through September 16, 1983

During the week of September 12 through September 16, 1983, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

September 30, 1983.

Richard T. Tedrow,

Acting Director Office of Hearings and Appeals.

Apex Oil Company, St. Louis, Missouri, HRO-0190, Crude Oil

On September 12, 1983, Apex Oil Company, 212 S. Central Avenue, St. Louis, Missouri, filed a Notice of Objection to a Proposed Remedial Order which the Tulsa, Oklahoma, District Office of Enforcement issued to the firm on August 11, 1983. In the PRO, the Tulsa District Office found that during the period April 1978 through January 1979, Apex Oil Company sold crude oil at prices exceeding maximum lawful levels. According to the PRO, the Apex Oil Company violation resulted in $5,974,033.22 of overcharges.

Energy Exchange Company, Inc., Bakersfield, California, HRO-0191, Crude Oil

On September 14, 1983, Energy Exchange Company, Inc., 2000 Oak Street, Bakersfield, California, filed a Notice of Objection to a Proposed Remedial Order (PRO) issue to the firm on August 5, 1983. In the PRO, the San Francisco Office of the Economic Regulatory Administration found that during the period April 1976 through December 1977 the firm violated 10 CFR Part 212, Subparts F and L, by: (1) selling crude oil at prices in excess of the maximum lawful selling prices; (2) selling crude oil without proper certification; (3) altering and falsifying records; and (4) collecting "consulting fees" on certain sales of crude oil. Selected transactions in 1978 are also included in the PRO. According to the PRO, the violations resulted in $2,260,649.00 of overcharges.

[FR Doc. 83-27455 Filed 10-6-83; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-24397]

Availability of Environmental Impact Statements Filed September 12 Through September 16, 1983 Pursuant to 46 CFR Part 1506.9

Correction

In FR Doc. 83-26068 appearing on page 43402 in the issue of Friday,

September 23, 1983, make the following correction in the third column: In the third line, "Nov. 9, 1983" should read "Nov. 4, 1983".

BILLING CODE 1505-01-M

[ER-FRL-2444-2]

Availability of Environmental Impact Statements Filed September 19 Through September 23, 1983 Pursuant to 46 CFR Part 1506.9

Correction

In FR Doc. 83-26833 appearing on page 44902 in the issue of Friday, September 30, 1983, make the following correction in the second column: Under EIS No. 830508, in the fourth line, "Nov. 31, 1983" should read "Oct. 31, 1983".

BILLING CODE 1505-01-M

[Docket No. ECAO-CD-81-2; ORD-FRL 2441-2]

Draft Air Quality Criteria Document for Lead

Correction

In FR Doc. 83-26125 beginning on page 43724 in the issue of Monday, September 26, 1983, make the following correction. In column two, fourth line from the bottom, "Cincinnati, OH 45286" should read "Cincinnati, OH 45268".

BILLING CODE 1505-01-M

[ER-FRL 2447-2]

Availability of Environmental Impact Statements Filed September 26 Through September 30, 1983, Pursuant to 46 CFR 1506.9

RESPONSIBLE AGENCY: Office of Federal Activities; General Information (202) 382-5075 or (202) 382-5076.

EIS No. 830524, Draft, COE, MI, Paw Paw Lake Flood Control Project, Berrien County, Due: Nov. 21, 1983

EIS No. 830525, FSuppl, FHW, MA, MA-25 Completion, Red Brook to Bourne Bridge, Plymouth/Barnstable Cos., Due: Nov. 9, 1983

EIS No. 830527, Final, COE, HI, Wailua River Hydropower Project, Construction, Kauai County, Due: Nov. 7, 1983

EIS No. 830528, Final, COE, HI, Hilo Harbor Deep Draft Navigation Improvements, Hawaii County, Due: Nov. 7, 1983

EIS No. 830529, Final, SCS, NY, Newton-Hoffman Creeks Watershed Flood Plan, Chemug and Schuyler Cos., Due: Nov. 7, 1983

EIS No. 830530, Final, EPA, TX, Malakoff Electric Generating Station and Trinity Mine, NPDES Permit, Due: Nov. 7, 1983

EIS No. 830531, Final, BLM, WY, Divide Resource Area Livestock Grazing Management Program, Due: Nov. 7, 1983

EIS No. 830532, Draft, FHW, NY, Taconic State Parkway Reconstruction, Westchester County, Due: Nov. 21, 1983

EIS No. 830533, FSuppl, IBR, OK, McGee Creek Water Resources Development, Atoka County, Due: Nov. 7, 1983

EIS No. 830534, Draft, BLM, NV, Lahontan Resource Area, Resource Management Program, Due: Jan. 23, 1984

EIS No. 830535, Final, BLM, WY, Salt Wells-Pilot Butte Livestock Grazing Mgmt., Sweetwater/Uinta Cos., Due: Nov. 7, 1983

EIS No. 830536, Final, BLM, ID, Big Lost-Mackay Planning Units, Livestock Grazing Management Program, Due: Nov. 7, 1983

EIS No. 830537, Final, BLM, UT, Tooele Planning Area, Grazing Management Program, Due: Nov. 7, 1983

EIS No. 830538, Final, COE, WA, East, West and Duwamish Waterways Improvement, King County, Due: Nov. 7, 1983

EIS No. 830539, DRevised, BLM, NM, San Juan River Regional Coal Leasing and Development, Due: Nov. 21, 1983

EIS No. 830540, Draft, BIA, AZ, Firebird Football Stadium Construction, Maricopa County, Due: Nov. 21, 1983

EIS No. 830541, Final, NRC, WI, Pt. Beach Nuclear Plant, Unit #1, Generator Repair, License Amendment, Due: Nov. 7, 1983

Amended Notice:

EIS No. 820735, Final, EPA, MXG, Offshore Platform Hazardous Waste Incineration Facility, Published FR 11-19-82—Officially withdrawn

Dated: October 4, 1983.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 83-27438 Filed 10-6-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS—140039; TSH-FRL 2445-8]

ICF Inc., et al.; Transfer of Data to Contractor and Subcontractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will transfer to its contractor, ICF Inc. and its subcontractors: Putnam, Hayes, and Bartlett, Inc. (PHB), PEDCo Environmental, Inc. and Sobotka and Co., information which has been or will be submitted to EPA under sections 4, 6 and 8 of the Toxic Substances Control Act (TSCA). These firms (either individually or as a team) will review this information and use it to evaluate the potential economic impacts of regulatory actions taken under section 6 of TSCA.

DATE: The transfer of confidential data submitted to EPA will occur no sooner than 10 working days after date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, D.C. 20460, Toll-Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: The Office of Toxic Substance (OTS) is responsible for evaluating the need for, and where necessary developing, regulatory actions to reduce unreasonable rusks of injury to health or the environment from chemicals that are already in commerce. In the evaluation process, EPA considers various factors (e.g., exposure levels, engineering controls to control exposure, the uses and substitutes of the various chemicals and their toxicity profiles, etc.) before deciding to proceed with a regulatory action. When a regulatory action for a specific chemical is warranted and developed, the Agency considers the potential economic impact of the control requirements (e.g., engineering controls or personal protection equipment, etc.) and other regulatory options. ICF Inc. and its subcontractors, PHB, PEDCo Environmental, and Sobotka and Co., are currently providing support (under Contract No. 68-02-3935) to IPA in performing these engineering and economic evaluations in connection with the OTS Existing Chemicals Program as well as other regulatory activities (e.g., asbestos, PCBs, etc.) under section 6 of TSCA.

The engineering and economic analyses are based on data, such as current exposure levels, manufacturing processes, production levels or sales, and uses and substitutes, that are in the public domain or submitted by chemical manufacturers, processors or users. in some cases, this information is confidential and available for review only to authorized EPA employees and contractors that have been cleared and formally approved for access to such data.

In accordance with 40 CFR 2.306(j), EPA has determined that it will need to disclose to ICF Inc. and its subcontractors confidential business information submitted to EPA under sections 4, 6, and 8 of TSCA to perform work under the above-noted contract. Since these firms will review information that in some cases is confidential, EPA is issuing this notice to inform all submitters of data under

sections 4, 6, and 8 of TSCA that these firms (either individually or working together as a team) may receive from EPA, on a need-to-know basis, confidential business information on specific chemicals that are under review or are subjects of regulatory actions. After completing their engineering or economic analysis for a specific chemical, any firm receiving confidential business information will return all such information to EPA.

ICF Inc. and its subcontractors PHB, PEDCo Environmental Inc., and Sobotka and Co. have been authorized to have access to TSCA confidential business information under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved the security plans of these four firms and has conducted the required inspections of the contractors' facilities and found them to be in compliance with the provisions of the manual. Personnel from these four firms will be required to sign a non-disclosure agreement before they are permitted access to confidential information in accordance with the "TSCA Confidential Business Information Security Manual" and the Contractor Requirements manual.

Dated: September 2, 1983.

Marcia Williams,

Acting Director, Office of Toxic Substances.

[FR Doc. 83-27393 Filed 10-6-83; 8:45 am]

BILLING CODE 6560-50-M

[Docket No. WH-FRL-2446-7]

National Pollutant Discharge Elimination System Permit Decisions; Pulp, Paper, and Paperboard Point Source Category, Alaska; Additional Public Hearing

AGENCY: Environmental Protection Agency.

ACTION: Notice of additional public hearing on tentative NPDES permit decisions.

SUMMARY: On September 16, 1983, the Environmental Protection Agency (EPA) provided notice of tentative National Pollutant Discharge Elimination System (NPDES) permit decisions, including: (1) The tentative decision to deny fundamentally different factors (FDF) variance requests, relating to Alaska Lumber and Pulp Company, Inc., Sitka, Alaska (ALP) and Louisiana-Pacific Corporation, Ketchikan, Alaska (LPK); (2) two public hearings on the tentative permit decisions scheduled in Sitka and Ketchikan, Alaska; (3) state certification; (4) state determination of consistency with the Alaska Coastal Zone Management Program, and (5) tentative decision to deny petition to establish an Alaska subcategory in the Pulp, Paper, and Paperboard Point Source Category (48 FR 41634). Today EPA Region X is providing notice of an additional public hearing to be held in Seattle, Washington on Novmber 7, 1983 on the tentative NPDES permit decisions.

Date and address of public hearing: The Hearing Officer designated by the Regional Administrator will conduct an additional public hearing on the matters as enumerated above, on November 7, 1983, at 2:30 p.m. at Park Place Building, Room 12A, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Further information on these actions, and requests for copies of the Tentative Decision, Tentative Decision Support Document and draft NPDES permits, may be obtained from Mr. Danforth Bodien, Region X, Environmental Protection Agency (M/S 329), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442-1531 or Mr. Robert W. Dellinger, Environmental Protection Agency (WH-552), 401 M Street, SW., Washington, D.C. 20460, (202) 382-7137.

SUPPLEMENTARY INFORMATION: On September 14, 1983, ITT Rayonier Inc. submitted a request to the Regional Administrator to hold an additional public hearing on the tentative NPDES permit decisions in Seattle, Washington. EPA has granted this request.

The public comment period, addresses for submission of comments, and the times and locations of the Sitka and Ketchikan, Alaska public hearings remain unchanged.

Dated: September 30, 1983.

Ernesta B. Barnes,

Regional Administrator, EPA Region X.

[FR Doc. 83-27391 Filed 10-6-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59136; BH-FRL 2446-6]

Premanufacture Exemption Applications; Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the **Federal Register** of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of three applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: October 24, 1983.

ADDRESS: Written comments, identified by the document control number "[OPTS-59136]" and the specific TME number should be sent to: Document Control Officer (TS-793), Management Support Division, Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Margaret Stasikowski, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

TME 83-82

Close of Review Period. November 11, 1983.

Importer. Confidential.

Chemical. (G) Substituted phosphonium borate.

Use/Import. Rubber additive. Import range: Confidential.

Toxicity Data. Acute oral: 160 mg/kg; Irritation: Skin—Very slight; Eye—Extremely; Ames Test: Non-mutagenic.

Exposure. No contact with the pure chemical. Minimal contact with compounds containing small percentage of the chemical, limited to industrial users.

Environmental Release/Disposal. Confidential.

TME 83-83

Close of Review Period. November 11, 1983.

Importer. Confidential

Chemical. (G) Substituted phosphonium chloride

Use/Import. Rubber additive. Import range: Confidential.

Toxicity Data. Acute oral: 158 mg/kg; Irritation: Skin—Nonirritant, Eye—Extremely; Ames Test: Non-mutagenic.

Exposure. No contact with the pure chemical. Minimal contact with compounds containing small percentage of the chemical, limited to industrial users.

Environmental Release/Disposal. Confidential.

TME 83–84

Importer. Confidential.

Chemical. (G) Substituted phosphonium chloride, cadmium complex.

Use/Import. Rubber additive. Import range: Confidential.

Toxicity Data. Acute oral: 175; Irritation: Skin—Nonirritant, Eye—Extremely; Ames Test: Non-mutagenic.

Exposure. No contact with the pure chemical. Minimal contact with compounds containing small percentage of the chemical, limited to industrial users.

Environmental Release/Disposal. Confidential.

Dated: October 3, 1983.

Linda A. Travers,

Acting Director, Management Support Division.

[FR Doc. 83-27380 Filed 10-6-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51487; TSH-FRL-2447-1]

Premanufacture Notices; Certain Chemicals

AGENCY: Envoronmenal Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** on May 15, 1979 (44 FR 28588) and November 7, 1980 (45 FR 74378). This notice announces receipt of thirty-one PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 83–1294, 83–1295, 83–1296, 83–1297, 83–1298, 83–1299 and 83–1300: December 21, 1983.

PMN 83–1301, 83–1302, 83–1303, 83–1304, 83–1305, 83–1306, 83–1307, 83–1308 and 83–1309: December 24, 1983.

PMN 83–1310, 83–1311, 83–1312, 83–1313, 83–1314, 83–1315, 83–1316, 83–1317, 83–1318, 83–1319, 83–1320 and 83–1321: December 25, 1983.

PMN 83–1322: December 26, 1983.

PMN 83–1323 and 83–1324: December 27, 1983.

Written comments by:

PMN 83–1294, 83–1295, 83–1296, 83–1297, 83–1298, 83–1299 and 83–1300: November 21, 1983.

PMN 83–1301, 83–1302, 83–1303, 83–1304, 83–1305, 83–1306, 83–1307, 83–1308 and 83–1309: November 24, 1983.

PMN 83–1310, 83–1311, 83–1312, 83–1313, 83–1314, 83–1315, 83–1316, 83–1317, 83–1318, 83–1319, 83–1320 and 83–1321: November 25, 1983.

PMN 83–1322: November 26, 1983.

PMN 83–1323 and 83–1324: November 27, 1983.

ADDRESS: Written comments, identified by the document control number "[OPTS–51487]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M St., SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Margaret Stasikowski, Acting Chief, Notice Review Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M St., SW., Washington, DC 20460, (202–382–3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 as stated above.

PMN 83–1294

Manufacturer. Confidential.

Chemical. (G) Dimer acids monocarboxylic acid, dicarboxylic acids, diamines polyamide resin.

Use/Production. (S) Industrial water-borne flexographic printing inks. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submittted.

Exposure. Confidential.

Environmental Release/Disposal. Less than 0.1 kg/batch released to water with less than 2 kg/batch to land. Disposal by landfill.

PMN 83–1295

Manufacturer. Confidential.

Chemical. (G) Alkyl (substituted-phenyl) alkylate.

Use/Production. (G) Site-limited manufacturing intermediate. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. None.

Environmental Release/Disposal. No release. Disposal by incineration.

PMN 83–1296

Manufacturer. Milliken & Company.

Chemical. (G) Polyol acetal.

Use/Production. (G) Polymer additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

PMN 83–1297

Manufacturer. Confidential.

Chemical. (G) Polyurethanes.

Use/Production. (G) Coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 83–1298

Manufacturer. E. I. du Pont de Nemours & Company, Inc.

Chemical. (G) Acrylic copolymer.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation, a total of 2 persons/shift, 8 hrs/shift, 3 shifts/da, up to 48 da/yr.

Environmental Release/Disposal. Minimal release to land. Disposal by incineration, approved landfill and Resource Conservation and Recovery Act (RCRA) regulations.

PMN 83–1299

Manufacturer. E. I. du Pont de Nemours & Company, Inc.

Chemical. (G) Styrene acrylic copolymer.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation, a total of 2 persons/shift, 8 hrs/shift, 3 shifts/da, up to 48 da/yr.

Environmental Release/Disposal. Minimal release to land. Disposal by incineration, approved landfill RCRA regulations.

PMN 83–1300

Manufacturer. E. I. du Pont de Nemours & Company, Inc.

Chemical. (G) Fatty acid mercaptan acrylic copolymer.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manuracture: dermal and inhalation, a total of 2 persons/shift, 8 hrs/shift, 3 shifts/da, up to 53 da/yr.

Environmental Release/Disposal. Minimal release to land. Disposal by incineration, approved landfill and RCRA regulations.

PMN 83–1301

Manufacturer. E. I. du Pont de Nemours & Company, Inc.

Chemical. (G) Polymer of aliphatic and alicyclic diamines and aliphatic and benzene dicarboxylic acids.

Use/Production. (S) Parts for automotive, electrical, and mechanical devices. Prod. range: 300,000–900,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: dermal, a total of 120 workers, up to 8 da/yr.

Environmental Release/Disposal. 65,000–120,000 kg released to land.

PMN 83–1302

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Polymer of aliphatic and alicyclic diamines and aliphatic and benzene dicarboxylic acids.

Use/Production. (S) Parts for automotive, electrical, and mechanical devices. Prod. range: 300,000–900,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: dermal, a total of 120 workers, up to 8 da/yr.

Environmental Release/Disposal. 65,000–120,000 kg released to land.

PMN 83–1303

Manufacturer. Confidential.

Chemical. (G) Dimethyl siloxanes and silicones.

Use/Production. (G) RIM release agent. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation, a total of 2 workers, up to 2 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. Release to air. Disposal by publicly owned treatment works (POTW) and RCRA regulations.

PMN 83–1304

Manufacturer. Confidential.

Chemical. (G) Dimethyl siloxanes and silicones.

Use/Production. (G) RIM release agent. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation, a total of 2 workers, up to 2 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. Release to air. Disposal by POTW and RCRA regulations.

PMN 83–1305

Manufacturer. Confidential.

Chemical. (G) Naphthalene, dialkylated.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 9 workers.

Environmental Release/Disposal. Release to land. Disposal by incineration and approved landfill.

PMN 83–1306

Manufacturer. Confidential.

Chemical. (G) Dialkylated naphthalenesulfonic acid.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers.

Environmental Release/Disposal. Release to land. Disposal by incineration and approved landfill.

PMN 83–1307

Manufacturer. Confidential.

Chemical. Dialkylated naphthalene sulfonic acid barium salt.

Use/Production. (G) Coating component. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 3 workers.

Environmental Release/Disposal. 3 kg/batch released to land. Disposal by incineration and approved landfill.

PMN 83–1308

Manufacturer. Confidential.

Chemical. (G) Benzo-heterocyclic,,2-[[4-[alkyl[2-hydroxyalkyl]amino]phenyl]-azo]-6-methoxy-3-alkyl-,chloride.

Use/Production. (S) Industrial textile dye. Prod. range: Confidential.

Toxicity Data. Acute oral: 8,000 mg/kg; Irritation: Skin-Slight, Eye-Moderate.

Exposure. Manufacture, processing and disposal: dermal and inhalation, a total of 9 workers, up to 3 hrs/da, up to 28 da/yr.

Environmental Release/Disposal. Less than 20 kg/yr released to air with less than 10 to 100 kg/yr to water. Disposal by POTW.

PMN 83–1309

Manufacturer. Confidential.

Chemical. (G) Polymer with methyl methacrylate, butyl acrylate, and hydroxy functional acrylic monomers.

Use/Production. (G) Coating for industrial applications. Prod. range: 100,000–250,000 kg/hr.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 9 workers, up to 8 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. .5 kg/batch released to water with .5 to 10 kg/batch to land. Disposal by POTW and approved landfill.

PMN 83–1310

Importer. Kay-Fries, Inc.

Chemical. (S) mercaptopropyl methyl dimethoxy silane.

Use/Import. Confidential. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Import: dermal, a total of 1 worker, up to 0.25 hr/da, up to 12 da/yr.

Environmental Release/Disposal. No data submitted.

PMN 83–1311

Manufacturer. Confidential.

Chemical. (G) Phenolated rosin-modified alkyd.

Use/Import. (G) Varnishes for printing inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. No release. Disposal by POTW.

PMN 83–1312

Manufacturer. Confidential.

Chemical. (G) Urethane acrylate.

Use/Production. (G) Adhesive component. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. No release.

PMN 83–1313

Manufacturer. Confidential.

Chemical. (G) Modified, maleated metal resinate.

Use/Production. (S) Industrial publication gravure printing inks. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal and inhalation, a total of 6 workers.

Environmental Release/Disposal. Less than 0.2 kg/batch released to water with less than 2 kg/batch to land. Disposal by incineration and approved landfill.

PMN 83–1314

Manufacturer. Confidential.

Chemical. (G) Isocyanatoarylsilane.

Use/Production. (G) Intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 83–1315

Manufacturer. Confidential.
Chemical. (G) Rosin modified alkyd.
Use/Production. (G) Varnish for printing inks. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. No release. Disposal by POTW.

PMN 83–1316

Manufacturer. Confidential.
Chemical. (G) Alkyl fatty ester.
Use/Production. (G) Cosmetic additive lubricant. Prod. range: Confidential.
Toxicity Data. Acute oral: 5.0 g/kg; Irritation: Skin Minimal.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 83–1317

Manufacturer. Confidential.
Chemical. (G) Neopentylglycol alkyl ester.
Use/Production. (G) Hydraulic fluid lubricant. Prod. range: Confidential.
Toxicity Data. Acute oral: 5.0 g/kg: Irritation: Skin Slight.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 83–1318

Manufacturer. Confidential.
Chemical. (G) Methyl fatty acid esters.
Use/Production. (G) Chemical intermediate for cosmetic and lubricant production. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 83–1319

Importer. Henley & Company, Inc.
Chemical. (S) Cesium bicarbonate.
Use/Import. (G) Used for manufacture of other cesium chemicals. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

PMN 83–1320

Manufacturer. Ashland Chemical Company.
Chemical. (G) Polymer of acrylic acid, acrylic acid esters, and methacrylic acid esters.
Use/Production. (G) Commercial use on labels, decals, signs, bumper stickers, etc. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers, up to 8 hrs/da, up to 20 da/yr.
Environmental Release/Disposal. Less than 13 kg/batch released to air.

PMN 83–1321

Manufacturer. Chem-tronics, Inc.
Chemical. (G) Benzophenotetracarboxy imide amide prepolymer.
Use/Production. (G) Foam insulation, setting foam and panels for aircraft and naval vessels. Prod. range: 1,900–6,500 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 9 workers.
Environmental Release/Disposal. No release. Disposal by POTW.

PMN 83–1322

Manufacturer. Confidential.
Chemical. (G) Modified, maleated metal resinate.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal and inhalation.
Environmental Release/Disposal. Less than 0.2 kg/batch released to water with less than 2 kg/batch to land.

PMN 83–1323

Manufacturer. Confidential.
Chemical. (G) Acrylourethane.
Use/Production. (G) Coatings/adhesives for open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 83–1324

Manufacturer. Confidential.
Chemical. (G) Polyester amide.
Use/Production. (G) Binder resin for printing inks. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture, dermal.
Environmental Release/Disposal. No release. Disposal by POTW.

Dated: October 3, 1983.

Linda A. Travers,

Acting Director Management Support Division.

[FR Doc. 83-27388 Filed 10-6-83; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Meeting

The Consumer Advisory Council will meet on Wednesday, October 26, and Thursday, October 27. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The October 26 session is expected to begin at 1:00 p.m. and to continue until 5:00 p.m. The October 27 session is expected to begin at 9:00 a.m. and to conclude at 3:00 p.m., with a lunch break from 1:00 to 2:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, D.C. The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will consider the following topics:

1. *Review of the Board's Credit Card Study.* Discussion of the findings of the Board's credit card study of the economic effects of charge card usage on consumers, merchants, and card issuers; the study was mandated by the Cash Discount Act of 1981.

2. *Implications of Recent Deregulatory Initiatives in the Area of Consumer Financial Protection.* Discussion of: (1) Possible implications of the Administration's bank holding company deregulation proposal on consumer financial protection legislation and regulation, and (2) ways to help consumers cope with the realities of a deregulated marketplace.

3. *Strengthening the Consumer Credit Fraud Statutes.* Discussion of: (1) The magnitude of consumer credit fraud in the United States today, and (2) proposed legislation to expand existing law so that more cases of card fraud become federal offenses.

4. *Bankruptcy Reform.* Discussion of: (1) Whether individuals should be denied relief under Chapter 7 of the Bankruptcy code if it is shown that they have the potential to repay their debt out of future earnings, and (2) a recent U.S. General Accounting Office study that takes a before-and-after look at the Bankruptcy Reform Act of 1978.

5. *Evaluation of the Consumer Advisory Council.* Remarks by Council members whose terms expire at year-end regarding their experience on the Council; discussion of: (1) Ways in which the Council's usefulness and effectiveness could be increased, (2) whether the scope of the Council should be expanded to include providing advice and counsel to all the federal financial

regulators and supervisors, and (3) ways to utilize the expertise of former Council members.

6. *Regulatory Update.* Status report on recent Board regulatory actions in the area of consumer financial services.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ms. Ann Marie Bray, Staff Assistant, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Comments must be received no later than close of business Friday, October 21, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Mr. Jospeh R. Coyne, Assistant to the Board, at (202) 452-3204.

Board of Governors of the Federal Reserve System, October 3, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-27352 Filed 10-6-83; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by Bank Holding Companies; Banks of Iowa, Inc. and First of Murphysboro Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Banks of Iowa, Inc.*, Des Moines, Iowa; to acquire 100 percent of the voting shares or assets of Reed Street Company, Inc. and thereby indirectly acquire The Montgomery County National Bank, both of Red Oak, Iowa. Comments on this application must be received not later than November 2, 1983.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *First of Murphysboro Corp.*, Murphysboro, Illinois; to acquire at least 80 percent of the voting shares or assets of The First National Bank of Grand Tower, Grand Tower, Illinois. Comments on this application must be recieved not later than November 2, 1983.

Board of Governors of the Federal Reserve System, October 3, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-27353 Filed 10-6-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Notice of Proposed De Novo Nonbank Activities; Bank of New England Corp., et al.

The organizations indentified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound backing practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President), 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of New England Corporation*, Boston, Massachusetts (real and personal property leasing and asset-based lending; United States and overseas): To engage through its subsidiary, NEMCO Leasing Corporation (NEMCO), in leasing real and personal property and in making loans secured by mortgages and by security interests in equipment in accordance with Regulation Y. These activities would be conducted from NEMCO's existing office in Boston, Massachusetts and the service area for these activities would be the United States and foreign countries. Comments on this application must be received not later than October 31, 1983.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *First Interstate Bancorp*, Los Angeles, California (discount brokerage activities; United States): To engage, through its subsidiary, First Interstate Discount Brokerage, in discount brokerage activities by buying and selling securities solely as agent for the account of customers, without providing underwriting or investment advisory services; and in securities credit lending pursuant to Regulation T. These activities would be conducted from offices in San Francisco, California, serving the United States. Comments on this application must be received not later than October 24, 1983.

2. *Midland Bank PLC* and *Midland California Holdings Limited*, both of London, England, and *Crocker National Corporation*, San Francisco, California (trust, fiduciary and data processing activities; in the western and southern Pacific Ocean region, the State of Alaska, South Korea, Japan, Hong Kong, Republic of China, Singapore, Australia and New Zealand): To engage through a subsidiary, Bishop Trust Company, Limited, in trust, fiduciary and data processing activities. These activities would be conducted from offices of Hawaii or Guam and through independent agents serving Islands of the Western and Southern Pacific Ocean region, including but not limited to the commonwealth of the Northern Mariana Islands (which includes Saipan), the Republic of the Marshall Islands, the Federated States of Micronesia (which included Ponape, Truk, Kosrae and

Yap), the Republic of Nauru, the Republic of Palau, American Samoa (a U.S. territory), Western Samoa (an independent state), Fiji and Tahiti; the State of Alaska, the Republic of Korea, Japan, Hong Kong, the Republic of China, Singapore, Australia, and New Zealand. Comments on this application must be received not later than November 2, 1983.

3. *Wells Fargo & Company*, San Francisco, California (issuance of travelers checks; California): To engage in the issuance of traveler's checks, which will be sold by its subsidiary, Wells Fargo Bank, N.A., acting as agent for the issuer. This activity would be conducted from the offices of Wells Fargo Bank, N.A. throughout the State of California, serving the entire State of California. Comments on this application must be received not later than November 2, 1983.

Board of Governors of the Federal Reserve System, October 3, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-27387 Filed 10-6-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Howard Bancorp, et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President), 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Howard Bancorp*, Burlington, Vermont: to become a bank holding company by acquiring 100 percent of the voting shares of The Howard Bank, N.A., Burlington, Vermont. Comments on this application must be received not later than November 1, 1983.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Bank of Kentucky Corporation*, Maysville, Kentucky: to become a bank holding company by acquiring at least 90 percent of the voting shares of Bank of Maysville, Maysville, Kentucky. Comments on this application must be received not later than November 1, 1983.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Ontario Bancorporation, Inc.*, Ontario, Wisconsin: to become a bank holding company by acquiring 84.6 percent of the voting shares of Bank of Ontario, Ontario, Wisconsin. Comments on this application must be received not later than November 2, 1983.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Clinton Bancshares, Inc.*, Little Rock, Arkansas: to become a bank holding company by acquiring 100 percent of the voting shares of Clinton State Bank, Clinton Arkansas. Comments on this application must be received not later than November 1, 1983.

Board of Governors of the Federal Reserve System, October 3, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-27354 Filed 10-6-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Company; River Region Bancshares, Inc.

River Region Bancshares, Inc., Fordsville, Kentucky, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 83.5 percent or more of the voting shares of Bank of Fordsville, Fordsville, Kentucky. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

River Region Bancshares, Inc., Fordsville, Kentucky, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Fordsville Insurance Agency, Inc., Fordsville, Kentucky.

Applicant states that the proposed subsidiary would engage in the activities of agent for credit life and health insurance sales. These activities would be performed from offices of Applicant's subsidiary in Fordsville, Kentucky, and the geographic areas to be served are within a twelve mile radius of the city of Fordsville, Kentucky. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competiton, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis.

Any views or requests for hearing should be submitted in writing and received by the Reserve Bank not later than November 3, 1983.

Board of Governors of the Federal Reserve System, October 3, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-27356 Filed 10-6-83; 8:45 am]

BILLING CODE 6210-01-M

Merger of Bank Holding Companies; Midwest Financial Group, Inc.

Midwest Financial Group, Inc., Peoria, Illinois, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with CNB Bancorp Inc., Decatur, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Midwest Financial Group, Inc., is also engaged in the following nonbank activities: reinsuring credit life, and accident and health coverage. In addition to the factors considered under section 3 of the Act (banking factors),

the Board will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 3, 1983. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 3, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-27355 Filed 10-6-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on September 30.

Public Health Service

National Institutes of Health

Subject: Mesothelioma and employment (0925-0183)—extension/no change
Respondents: Individuals or households
OMB Desk Officer: Fay S. Iudicello

Office of the Assistant Secretary for Health

Subject: Survey of the Antecedents, Mediators, and Health Consequences of Stress—new
Respondents: Individuals or households
OMB Desk Officer: Fay S. Iudicello

Health Resources and Services Administration

Subject: Certification of Ownership and Use Status of Hill-Burton Aided Facilities—new
Respondents: State or local governments, not for profit institutions
Subject: Evaluation of the Administration Compliance Cost and Impact of the Inflation Factor for Titles VI and XVI Assisted Facilities—new
Respondents: Not for profit institutions
Subject: Evaluation of the Impact and Effectiveness of Titles VI and XVI Uncompensated Services Assurance—new
Respondents: Not for profit institutions
Subject: Uncompensated Services Assurance Report—new
Respondents: Not for profit institutions
Subject: Health Professions Student Loan (HPSL) Program Promissory Note—new
Respondents: Individuals and households; not for profit institutions
Subject: Nursing Student Loan (NSL) Program Promissory Note—new
Respondents: Individuals or households; not for profit institutions
OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

Subject: Provider Reimbursement Manual, Part 1, Chapter 27 Sections 2721, 2722 and 2725 (0938-0296)—extension/no change
Respondents: End Stage Renal Disease facilities participating in the Medicare program
Subject: Health Prepayment Data Card Coding Sheet (0938-0161)—reinstatement/no change
Respondents: Group medical plans participating in the Medicare program
OMB Desk Officer: Fay S. Iudicello

Office of the Secretary

Subject: Community Service Assurance Report (Hill-Burton) (0990-0096)—revision
Respondents: Hill-Burton recipients
OMB Desk Officer: Milo Sunderhauf

Office of Human Development Services

Subject: Referral for Work Incentive Program Registration (Individual) (IM-3) (0980-0111)—extension/no change
Respondents: Local income maintenance units
Subject: Work Incentive Program Certification Report (117-A); Separate Administrative Unit (SAU-4); Work Incentive Program Grant Change Report (117-B); Work Incentive Program Grant Change Record (IM-9) (0980-0157)—extension/no change
Respondents: State and local WIN programs
OMB Desk Officer: Milo Sunderhauf

Social Security Administration

Subject: Annual Statistical Report on Children in Families and in Foster Homes Receiving Aid to Families with Dependent Children Payments in Excess of the Poverty Level (0960-0150)—reinstatement
Respondents: State agencies administering the AFDC program
OMB Desk Officer: Milo Sunderhauf

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer)

Dated: October 3, 1983.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 83-27394 Filed 10-6-83; 8:45 am]

BILLING CODE 4150-04-M

National Institutes of Health

Board of Scientific Counselors, NINCDS; Meeting

Pursuant to the Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Neurological and Communicative Disorders and Stroke, National Institutes of Health, November 17 and 18, 1983, Conference Room 1B07, Building 36, Bethesda, Maryland. This meeting will be open to the public on November 17 from 9:00 a.m.-5:00 p.m. to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 9:00 a.m. until the conclusion of the meeting on November 18 for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performances, the competence of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Freedom of Information Coordinator, Mr. Edward M. Donohue, Federal Building, Rm. 1004, 7550 Wisconsin Avenue, Bethesda, MD 20205, telephone 301/496-9231, will furnish

summaries of the meeting and rosters of committee members.

The Executive Secretary from whom substantive program information may be obtained is Dr. Irwin J. Koplin, Director, Intramural Research Program, NINCDS, Building 10, Room 5N214, NIH, Bethesda, Maryland, 20205, telephone 301/496–4297.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: September 26, 1983.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 83-27371 Filed 10-6-83; 8:45 am]

BILLING CODE 4140-01-M

Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on November 2, 3, and 4, 1983. On November 2 and 3, the meeting will be held in Room 428, Building 5, National Institutes of Health. On November 4, the meeting will be held in Conference Room 7A–24, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public on November 2 from 8:30 a.m. until recess and on November 3 from 8:30 a.m. until noon. During this open session, the permanent staff of the Laboratory of Immunogenetics and of the Laboratory of Microbial Immunity will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting of the Board will be closed to the public on November 3 from 1:00 p.m. until recess and again on November 4 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Nancy Brun, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A–32, National Institutes of Health, Bethesda, Maryland 20205, telephone (301) 496–5717, will provide summaries of the meeting and rosters of the Board members.

Dr. Kenneth W. Sell, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 11C103, telephone (301) 496–3006, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13–301, National Institutes of Health)

Dated: September 16, 1983.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 83-27372 Filed 10-6-83; 8:45 am]

BILLING CODE 4140-01-M

Heart, Lung, and Blood Research Review Committee A; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on December 1–2, 1983, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20205.

This meeting will be open to the public on December 1, 1983 from 8:30 AM to approximately 9:30 AM to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 1, from approximately 9:30 AM until recess, and from 8:30 AM to adjournment on December 2, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–4236, will provide summaries of the meeting and rosters of the committee members.

Dr. Peter M. Spooner, Executive Secretary, Heart, Lung, and Blood Research Review Committee A, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health.)

Dated: September 23, 1983.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 83-27373 Filed 10-6-83; 8:45 am]

BILLING CODE 4140-01-M

Research Manpower Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Research Manpower Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health on November 12–13, 1983, at the Sheraton-Anaheim Hotel, 1015 W. Ball Road, Anaheim, California, 92802.

This meeting will be open to the public on November 12, 1983, from 8:00 p.m. until recess, to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung and Blood Institute.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 13, 1983, from 8:00 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–4236, will provide summaries of the meeting and rosters of the committee members.

Dr. John L. Fakunding, Executive Secretary, NHLBI, Westwood Building, Room 550, Bethesda, Maryland 20205, phone (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research, National Institutes of Health.)

Dated: September 23, 1983.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 83-27370 Filed 10-6-83; 8:45 am]

BILLING CODE 4140-01-M

National Arthritis, Advisory Board et al.; Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92-463, 86 Stat. 770-776), the National Institutes of Health announces the reestablishment of the following committees by the Secretary of Health and Human Services under the general authority provided by 42 U.S.C. 217a (Section 222 of the Public Health Service Act). This reestablishment is necessitated by the expiration of the statute which provided establishment authority specific to these committees.

National Arthritis Advisory Board. This committee shall review and evaluate the implementation of the current Arthritis Plan; periodically update the Plan to ensure its continuing relevance; for the purpose of assuring the most effective use and organization of resources respecting arthritis, advise and make recommendations to the Congress and the Secretary, the Director of the National Institutes of Health, the Director of the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, and the heads of other appropriate Federal agencies for the implementation and revision of the Plan.

National Diabetes Advisory Board. This committee shall review and evaluate the implementation of the current Diabetes Plan; periodically update the Plan to ensure its continuing relevance; for the purpose of assuring the most effective use and organization of resources respecting diabetes mellitus, advise and make recommendations to the Congress and the Secretary, the Director of the National Institutes of Health, the Director of the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, and the heads of other appropriate Federal agencies for the implementation and revision of the Plan.

National Digestive Diseases Advisory Board. This committee shall review and evaluate the implementation of the current Digestive Diseases Plan; periodically update the Plan to ensure its continuing relevance; for the purpose of assuring the most effective use and organization of resources respecting digestive diseases, advise and make recommendations to the Congress and the Secretary, the Director of the National Institutes of Health, the Director of the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, and the heads of other appropriate Federal agencies for the implementation and revision of the Plan.

The reestablishment of these committees will remain in effect until specific authorizing legislation is passed or until September 30, 1984, whichever occurs first.

Dated: October 6, 1983.

James B. Wyngaarden, M.D.,

Director, NIH.

[FR Doc. 83-27831 Filed 10-6-83; 12:25 pm]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Oil Shale Environmental Advisory Board; Meeting

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting of oil shale environmental advisory board.

SUMMARY: In accordance with the provisions of Pub. L. 92-463, notice is hereby given that a meeting of the Oil Shale Environmental Advisory Board (Panel) will be held on October 26 and 27, 1983, at the Grand Junction Hilton, 743 Horizon, Grand Junction, Colorado. The meeting will begin at 1:00 p.m. of Wednesday, October 26, and conclude at 4:00 p.m., Thursday, October 27.

DATE: The meeting will be held beginning at 1:00 p.m. October 26, and ending at 4:00 p.m., October 27.

ADDRESS: The meeting will be held at: The Grand Junction Hilton, 743 Horizon, Grand Junction, Colorado.

FOR FURTHER INFORMATION CONTACT: Ms. Elanor David, Office of the Oil Shale Advisory Panel, Department of the Interior, Room 1010, Building 67, Denver Service Center, Denver, Colorado 80225; (303) 234-3275.

SUPPLEMENTARY INFORMATION: The Oil Shale Environmental Policy Board (Panel) was established to assist the Department of the Interior in the performance of functions in connection with the supervision of oil shale leases issued under the Prototype Oil Shale Leasing Program.

The Panel will review a management plan for expended MIS retort on prototype lease Tract C-a proposed by Rio Blanco Oil Shale Company and a proposed off-tract disposal for the same project. Status reports will be received on the Cathedral Bluffs Project (Tract C-b) and the White River Shale Project (Tracts U-a and U-b). Briefings by a representative of the Synthetic Fuels Corporation and on the Bureau of Land Management's oil shale leasing program will be heard. The Panel will also hear reports from Department of the Interior field officials, and within the time constraints, consider any other pertinent items which come before it.

The meeting will be open to the public. It is expected that space will permit at least 75 persons in addition to the Panel members to attend the meeting. Interested persons may make brief presentations to the Panel or submit written statements. Requests for time on the agenda or for further information concerning the meeting should be made to the Panel Chairperson, Mr. Henry O. Ash, Office of the Oil Shale Environmental Advisory Panel, Department of the Interior, Room 1010, Building 67, Federal Center, Denver, Colorado 80225; (303) 234-3275.

Minutes of the meeting will be available for public inspection at the Panel office 30 days after the meeting.

Dated: October 4, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-27846 Filed 10-6-83; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[INT DRMP/EIS 83-66]

Availability of the Draft Resource Management Plan/Environmental Impact Statement for the Lahontan Resource Area, Nevada

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of and Public Hearings on the Draft Resource Management Plan/Environmental Impact Statement for the Lahontan Resource Area, Carson City District, Carson, Nevada.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 and Section 202 of the Federal Land Policy and Management Act of 1976, the BLM, Carson City District has prepared a combined Resource Management Plan/Environmental Impact Statement for the Lahontan Resource Area, Carson City District, Nevada.

SUPPLEMENTARY INFORMATION: The Lahontan Resource Management Plan/Environmental Impact Statement is a comprehensive land use planning document which establishes management actions and objectives for resource condition and use levels, the standards for monitoring and evaluating the plan's effectiveness, and the need for more detailed management plan(s) and support actions. It also is an environmental impact statement which analyzes the effects of implementing a multiple use resource management plan on 2.4 million acres of public land in the

east half of the Carson City District in Nevada. Four alternatives were considered along with the Preferred Alternative. They are: No Action, Commodity Production, Resource Protection and a Mid-Range Alternative. The affected environment is discussed and the environmental consequences occurring from each alternative are documented.

FOR FURTHER INFORMATION CONTACT: Tom Owen, District Manager, Attn: RMP/EIS Team Leader, Carson City District Office, 1050 E. William St., Ste. 335, Carson City, NV 89701 (702) 882–1631.

Copies of the draft document are available for review at the following locations:

Office of Public Affairs, Bureau of Land Management, 18th and C Streets, Washington, D.C. 20240
Bureau of Land Management, Nevada State Office, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520, (702) 784–5448
Bureau of Land Management, Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada 89102, (702) 385–6403
Bureau of Land Management, Winnemucca District Office, 705 East 4th Street, Winnemucca, Nevada 89445, (702) 623–3676
Bureau of Land Management, Elko District Office, 2002 Idaho Street, Elko, Nevada 89801
Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301, (702) 289–4965
Bureau of Land Management, Carson City District Office, 1050 E. William Street, Carson City, Nevada 89701, (702) 635–5181
Bureau of Land Management, Battle Mountain District Office, North 2nd and Scott Streets, Battle Mountain, Nevada 89820 (702) 635–5181

Also, copies are available for review at the following public libraries:

Carson City Library, 900 N. Roop St., Carson City, Nevada 89701
Churchill County Library, 553 South Maine Street, Fallon, Nevada 89406
Government Publications Dept., University of Nevada, Reno, Reno Library, Reno, Nevada 89557
Nevada State Library, Library Building, Carson City, Nevada 89710
Lyon County Library, Yerington, Nevada
University of Nevada, Reno, Getchall Library, Reno, Nevada 89507
University of Nevada, Las Vegas, James R. Dickinson Library, 4505 Maryland Parkway, Las Vegas, Nevada 89154
Mineral County Library, 1st and D Streets Hawthorne, Nevada 89415
Nye County Library, Tonopah, Nevada 89049
Washoe County Library, 1301 South Center Street, Reno, Nevada 89505

A copy of the Draft RMP/EIS or summary will be sent to all individuals, agencies, and groups who have expressed interest in the Lahontan Resource Area planning process, and a limited number of copies are available upon request to the District Manager at the above address.

DATES: Written comments concerning issues pertinent to the Lahontan Resource Area RMP/EIS will be accepted until January 3, 1984. Public hearings have been scheduled for November 9, 1983 at the Pioneer Hotel, 221 So. Virginia, Reno, Nevada and November 10 at the Churchill County Multi-Purpose Building, 225 Scheckler Road, Fallon, Nevada. At these hearings, testimony concerning wilderness and other issues will be accepted. Interested individuals, representatives of organizations, and public officials wishing to testify are requested to contact the District Manager for advance registration by 4:15, November 4, 1983. Oral testimony will be limited to 10 minutes.

Dated: September 27, 1983.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 83-27253 Filed 10-6-83; 8:45 am]
BILLING CODE 4310-84-M

Utah, Colorado; Availability of Final Uinta-Southwestern; Utah Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, Department of the Interior, has prepared a final environmental impact statement (FEIS) analyzing coal tracts in central and southern Utah and west-central Colorado, for a proposed Federal coal lease sale in 1984.

ADDRESSES: Single copies of the FEIS may be obtained from the Utah State Office, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111. In addition, review copies may be examined at the following locations:

Bureau of Land Management Area Office, 900 North 7th East, P.O. Box AB, Price, Utah 84501
Moab District Office, Bureau of Land Management, 125 West 2nd South, P.O. Box 970, Moab, Utah 84532
Cedar City District Office, Bureau of Land Management, 1579 North Main, P.O. Box 724, Cedar City, Utah 84720
Richfield District Office, Bureau of Land Management, 150 East 900 North, P.O. Box 768, Richfield, Utah 84701
Kanab Resource Area Office, Bureau of Land Management, 320 North 1st East, P.O. Box 458, Kanab, Utah 84741
Uncompahgre Basin Resource Area Office, Bureau of Land Management, 336 South 10th, P.O. Box 1269, Montrose, Colorado 81401
Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202
Manti-LaSal National Forest, 599 West Price River Drive, Price, Utah 84501
Fishlake National Forest, 115 East 900 North, Richfield, Utah 84701
Office of Public Affairs, Bureau of Land Management, Interior Building, 18th and C Streets, NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Ronald Bolander, Uinta-Southwestern Utah Coal Region EIS Leader, Utah State Office, Bureau of Land Management, 136 East South Temple, Salt Lake City, Utah 84111. Telephone (801) 524–3133.

SUPPLEMENTARY INFORMATION: The FEIS analyzes environmental impacts that could result from leasing Federal coal in the Uinta-Southwestern Utah Coal Region. Four alternatives are considered: (1) Lease 27 tracts containing 1.907 billion tons of inplace coal, (2) Lease 22 tracts containing 1.668 billion tons of inplace coal, (3) Lease 20 tracts containing 1.316 billion tons of inplace coal, and (4) no competitive Federal coal leasing (No Action). Two tracts are located near Delta, Colorado, five near Alton, Utah, and 20 in central Utah. Alternative Two is the preferred alternative. The Hoffman Creek Tract in central Utah has been offered through an emergency lease sale in August 1983; title to the Federal coal in the Gooseberry Tract has been transferred to the State of Utah under the State Indemnity program. Both are included in the FEIS because of the timing of their availability relative to the proposed February 1984 regional sale.

About 700 copies of the draft EIS were sent to Federal, State, and local government agencies, non-governmental organizations, and private citizens for their review and comment. Public hearings were held in Kanab, Castle Dale, and Salt Lake City, Utah, and in Delta, Colorado. All substantive comments on the adequacy of the draft EIS have been responded to in the FEIS.

Dated: September 19, 1983.

Robert F. Burford,

Director.

[FR Doc. 83-29675 Filed 10-6-83; 8:45 am]

BILLING CODE 4310-84-M

Public Meeting; Known Geologic Structure Data Base; Future Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: Notice is hereby given that a public meeting will be held at the Bureau of Land Management's Eastern States Office to inform the public of the future availability of the Known Geologic Structure (KGS) Data Base for the Eastern States. The data base contains information concerning the locations of the KGS's in the 31 States east of and adjacent to the Mississippi River. Topics of discussion will include what type of data is contained in the data base, where the data base is available, how often the data base is updated, and how much a copy of the data base will cost. Public comments on the data base will be welcome.

DATE: The public meeting will be held at 10:00 a.m. on October 28, 1983, in the Public Room, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304.

FOR FURTHER INFORMATION CONTACT: Bob Hall, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 235-2846; or Wink Hastings, Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 220, Milwaukee, Wisconsin 53203, (414) 291-4421.

Pieter J. VanZanden,

Acting Eastern States Director.

[FR Doc. 83-27198 Filed 10-6-83; 8:45 am]

BILLING CODE 4310-84-M

[Group 673]

Filing of Plat of Survey; California

September 29, 1983.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian

T. 9 S., R. 1 W.
T. 10 S., R. 1 W.

2. This plat, representing the dependent resurvey of a portion of the San Bernardino Meridian through Tps. 9 and 10 S., a portion of the Rancho Pauma boundary, portions of the south and west boundaries and subdivisional lines, and Homestead Entry No. 79, and the survey of the subdivision of sections 19, 29, 30, 31, and 32, T. 9 S., R. 1 W., San Bernardino Meridian, under Group No. 673, California, was accepted August 19, 1983.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 83-27349 Filed 10-6-83; 8:45 am]

BILLING CODE 4310-84-M

Idaho; Shoshone District Advisory Council Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Advisory Council.

DATE: Thursday, November 10, 1983, at 9:00 a.m.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Jon Idso, Assistant District Manager for Resources, Shoshone District Office, P.O. Box 2 B, Shoshone, Idaho 83352. Telephone (208) 886-2206 or FTS 554-6576.

SUPPLEMENTARY INFORMATION: The approved agenda for the meeting includes the following items:

Discussion and Review of Alternatives for the Monument RMP

The Shoshone District Advisory Council is established under Section 309 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579; 43 U.S.C. 1701 et seq.), as amended. Operation and administration of the Council will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92-463; 5 U.S.C. Appendix 1) and Department of Interior and BLM regulations, including 43 CFR 1784.

The meeting will be open to the public. Anyone may present an oral statement before the Council between 2:00 and 3:00 or may file a written statement with the Council regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement must notify the Shoshone District Manager by November 8, 1983. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Charles J. Haszier,

District Manager.

[FR Doc. 83-27347 Filed 10-6-83; 8:45 am]

BILLING CODE 4310-84-M

Montana; Lewistown District Grazing Advisory Board; Meeting

AGENCY: BUREAU OF LAND MANAGEMENT, INTERIOR.

ACTION: Notice of Meeting.

SUMMARY: The Lewistown District Grazing Advisory Board will meet October 21, 1983. The agenda will be: October 21, 8:00 a.m. Meet at Valley Resource Area Office for tour of Bitter Creek Wilderness Study Area.

Return to Office, 5:00 p.m.

Opportunity for public comment will be provided throughout the tour. Members of the public wishing to join the tour should contact the District Manager (see below) by October 17, 1983.

DATES: October 21, 1983, 8:00 a.m. to 5:00 p.m.

ADDREESS: Valley Resource Area Office, Highway 2 West, Glasgow, Montana.

FOR FURTHER INFORMATION CONTACT: Glenn W. Freeman, District Manager, Bureau of Land Management, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The Lewistown District Grazing Advisory Board is authorized under Section 403 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1753). The Board advises the District Manager concerning the District's Rangeland Management Program.

Dated: September 28, 1983.

Glenn W. Freeman,

District Manager.

[FR Doc. 83-27356 Filed 10-6-83; 8:45 am]

BILLING CODE 4310-84-M

[W-77866]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Leases

Pursuant to the provisions of Pub. L. 31–245 and Title 43 Code of Federal Regulations, Section 3108.2–1(c), and Pub. L. 97–451, a petition for reinstatement of oil and gas lease W–77866 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the respective date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof, and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and will reimburse the Department for the cost of this **Federal Register** notice.

The lessee having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Minerals Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease W–77866 effective September 1, 1983, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Richard L. Hopkins,

Acting Chief, Branch of Fluid Minerals.

[FR Doc. 83-27361 Filed 10-6-83; 8:45 am]

BILLING CODE 4310-84-M

[I-19668 A, B, C, D, and E]

Realty Action; Oneida County, Idaho; Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, I–19668 A, B, C, D, and E. Sale of Public Lands in Oneida County, Idaho, known as the Malad Sales.

SUMMARY: The following land has been examined and, through land use planning which included public input, it has been determined that the sale of these parcels is consistent with section 203(a)(1) of the Federal Land Policy and Management Act of 1976 (FLPMA). None of the parcels are presently available for livestock grazing; therefore, no cancellation of grazing preference is required under the regulations in 43 CFR 4110.4–2(a). The lands will be offered at public auction using competitive and modified competitive bidding procedures (43 CFR 2711.3–1,2) for no less than the appraised fair market value. Any bids for less than such value will be rejected as required by FLPMA. Both sealed and oral bids will be accepted. A bid will also consititute an application for conveyance of the mineral rights, except oil and gas. The mineral interests being offered for conveyance have no known mineral value. The high bidder must deposit a fifty dollar ($50) non-returnable filing fee for the mineral conveyance (43 CFR 2720.1–2(c)) and one-fifth of the full bid price (43 CFR 2711.3–1(d)), immediately at the sale. Failure to deposit these sums will result in disqualification as the high bidder. The authorized officer shall then determine whether to accept the next highest bid, withdraw the public lands from the market or re-offer them for sale at a later date.

BOISE MERIDIAN, IDAHO

Name	Legal description	Acreage	Type bidding
Parcel A (Pocatello Valley)	T. 15 S., R. 34 E., Sec. 8: NE¼NW¼	40	Competitive
Parcel B (Hanzel North)	T. 15 S., R. 34 E., Sec. 18: Lot 1	47.09	Modified.
Parcel C (Mid Hanzel)	T. 15 S., R. 34 E., Sec. 18: Lot 4, SE¼SW¼	87.17	Do.
Parcel D (Hanzel South)	T. 15 S., R. 34 E., Sec. 30: Lot 1	47.23	Do.
Parcel E (Gwenford)	T 15 S., R. 35 E., Sec. 9: SW¼SW¼	40	Competitive

On *parcels B, C and D the bidding will be modified* to allow designated bidders the right to meet the high bid. This right is offered to protect existing uses and prevent inequities to adjoining landowners. The *designated bidder on Parcel B is Leroy Jensen* of Malad, Idaho. The *designated bidder on parcels C and D is Mrs. Duluty Allen* (Allen farms) of Ogden, Utah.

The patents when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by United States. Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. All oil and gas deposits, with the right to explore, prospect for, mine and remove under applicable law, and such regulations as the Secretary of the Interior may prescribe.

In addition, the patent is subject to the following conditions:

1. All valid existing rights and reservations of record.

DATES: The public auction will be held on December 14, 1983 at 1:30 p.m.

ADDRESSES: The public auction will be held at the Burley District Office, Rt. 3, Box 1, 200 South Oakley Highway, Burley, Idaho, 83318. Additional information concerning the land, terms and conditions of the sale, and bidding instructions may be obtained from Karl Simonson, District Realty Specialist, at the above address, or by calling (208) 678–5514.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

The BLM reserves the right to accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sales would not be fully consistent with Sec. 203(g) of FLPMA or other applicable laws.

Dated: September 29, 1983.

Nick James Cozakos,

District Manager.

[FR Doc. 83-27360 Filed 10-6-83; 8:45 am]

BILLING CODE 4310-84-M

[F-80844]

Leasing of Public Lands at Skiland/Cleary Summit, Alaska

Under authority of Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732), the Bureau of Land Managment intends to offer certain lands under its administration in the Skiland/Cleary Summit area for lease for residential purposes. The approximately 60 acres affected are within Section 31 of T.3N., R2W., Fairbanks Meridian.

The purpose of the 10 proposed renewable 10-year leases is to authorize a long-standing occupancy. For this reason, they are being offered on a non-competitive basis to present occupants. Fair market rental will be charged.

Detailed information concerning the leases is available for review at the Fairbanks District Office.

Within 30 days of the final publication of this Notice, in accordance with 43 CFR 2920.5–2, the prospective lessees must submit an application which shall include the name and legal mailing address of the applicant, a reference to the serial number shown above, and a $250.00 non-returnable payment for procession costs. Applications should be

submitted to the Fairbanks District Office, Bureau of Land Management, P.O. Box 1150, Fairbanks, Alaska 99707.

For a period of 30 days following the final publication of this Notice, interested parties may submit comments to the Fairbanks District Office.

Donald Runberg,

Acting District Manager.

[FR Doc. 83-27425 Filed 10-6-83; 8:45 am]

BILLING CODE 4310-84-M

National Public Lands Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet November 7–9, 1983. The meeting will be held in Room 7000 A&B of the Main Interior Building, 18th and C Streets, NW., Washington, D.C. The meeting hours will be 8:30 a.m. to 5:00 p.m. on Monday, the 7th, and 8:30 a.m. to 2:00 p.m. on Wednesday, the 9th. On Tuesday, November 8, Council members will visit Capitol Hill to discuss public lands issues with Members of Congress and their staffs. The proposed agenda for the meeting is:

Monday, November 7: Morning: Update on Department of the Interior and Bureau of Land Management (BLM) programs; Report on the Commission on Fair Market Value Policy for Federal Coal Leasing; Presentation on mineral royalty distribution; and Solicitor's discussion on range improvement liability.

Afternoon: Public statement period; Report on the unauthorized use of the public lands for growing cannabis; Discussion on proposed controls on use of strychnine; and meetings of Council subcommittees (Energy and Minerals, Renewable Resources, Lands, and Administrative/Legislative).

Wednesday, November 9: Morning: Election of Council Officers for 1984 and setting of dates and locations for future Council meetings; Working sessions of subcommittees, followed by reports to full Council.

Afternoon: Discussion of subcommittee recommendations and passing of Council resolutions.

All meetings of the Council will be open to the public. Opportunity will be provided for members of the public to make oral statements to the Council, beginning at 1:00 p.m., Monday, November 7. Oral comments will be limited to 10 minutes per person and should address specific national public lands issues on the meeting agenda. Speakers are encouraged to submit a copy of their written testimony prior to oral delivery so that the Council will be prepared to respond or answer questions. Please send written comments by October 30 to BLM's Washington Office at the address listed below:

DATES: November 7 and 9, 1983—Council Meeting. November 7—Public statements.

ADDRESS: Copies of public statements should be mailed by October 30 to: Director (150), Bureau of Land Management, Department of the Interior, 18th & C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Karen Slater, Washington, D.C. Office, BLM, Telephone (202) 343–2054; or Haywood Meeks, Public Affairs Specialist, Washington, D.C. Office, BLM, Telephone (202) 343–5717.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of the Bureau.

Dated: October 4, 1983.

Robert F. Burford,

Director.

[FR Doc. 83-27443 Filed 10-6-83; 8:45 am]

BILLING CODE 4310-84-M

Sale of Public Lands; Idaho

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action, sale of public lands in Lemhi County, Idaho.

SUMMARY: Based on public supported land use plans the following described land has been examined and identified as suitable for disposal by public sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750, U.S.C. 1713), at no less than the appraised fair market value.

Parcel No.	Legal description	Acres
I-19632A, Tract I-4(19)	T.15N., R.21E., Sec. 23, N½NE¼.	80.00
I-19632B, Tract I-4(20)	T.15N., R.21E., Sec. 24, N½NW¼.	80.00
I-19632C, Tract I-4(21)	T.15N., R.22E., Sec. 7, lot 4.	39.78
I-19632D, Tract I-4(22)	T.14N., R.23E., Sec. 7, SW¼SE¼.	40.00

Bids are being solicited for each parcel offered for sale. Appraised values are not being published in this NORA. The value will be disclosed only at the conclusion of the sale and only for those parcels for which acceptable bids were received, i.e., appraised value or higher.

Sale Parcel I–19632A and I–19632B will be offered for sale at public auction through *Competitive Bidding.*

Sale Parcel I–19632C will be offered for *Direct Sale* to Whitworth Ranches, Inc., based on historic use and value of added improvements. Failure of the proponents to submit the required amount within 30 days from the date of the sale will result in concellation of the sale to them. This parcel would then be readvertised at a later date.

Sale Parcel I–19632D will be offered for sale at public auction through *Modified Competitive Bidding.* Mr. Ken White, the adjoining landowner, will be given preference to meet the high bid or the appraised fair market value whichever is higher. Refusal or failure by Mr. White to meet the high bid within 30 days shall constitute a waiver of such right and the land will be sold to the successful bidder.

These parcels are difficult and uneconomical to manage as part of the public lands and are not suitable for management by another Federal agency. There are no significant resource values which will be affected by the sale of these parcels.

The BLM may, within 30 days of receipt of any offer, accept or reject any or all offers or withdraw any land or interest in land from sale, at the discretion of the authorized officer (Section 203(a) FLPMA). There is legal access to these tracts.

No bids will be accepted for less than the appraised price and bids must include all the lands contained in the parcel. Bidders can make full payment of the purchase price at the sale or pay a non-refundable 20 percent (20%) and the balance within 30 days. Payment may be made by personal check, certified check, money order or cashier's check made payable to the Bureau of Land Management or by cash.

Both oral and sealed bids will be accepted. If no bids are received for sale parcels I–19632A, I–19532B or I–19632D on the sale date, either oral or sealed, the sale will be adjourned until the next Thursday at the same hour and place and continue on each succeeding Thursday until the lands are sold as specified in this notice. This notice terminates on March 9, 1984 close of business and the land will not be available after that date.

A patent for the land, when issued, will be subject to the following conditions:

1. A right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All minerals will be reserved to the United States in accordance with section 290(a) of the Federal Land Policy and Managment Act of 1976, 43 U.S.C. 1719.

3. All valid existing rights and reservations of record on the date of patenting.

4. For Parcels I–19632A and I–19632B: The successful bidder agrees that he takes the real estate subject to the existing grazing use of Mr. George Whitworth holder of grazing authorization term permit grazing record number 4044, highway allotment number 4414 in the amount of 5 AUM's and Mr. Robert Whitworth holder of grazing authorization term permit grazing record number 4047, highway allotment number 4414 in the amount of 5 AUM's (10 AUMs total). The rights of Mr. George Whitworth and Mr. Robert Whitworth to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization numbers 4044 and 4047 both shall cease on February 29, 1989. The successful bidder is entitled to receive annual grazing fees from Mr. George Whitworth and Mr. Robert Whitworth in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the **Federal Register.**

DATE: The public auction will be held on Thursday, December 15, 1983, beginning at 10:00 a.m.

ADDRESS. The public auction will be held at the Salmon District Office, Bureau of Land Management, South Highway 93 (P.O. Box 430), Salmon, Idaho 83467. Additional information concerning the land, terms and conditions of the sale and bidding instructions can be obtained from Chuck Keller at the above address or by calling 208–756–2201.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Salmon District Manager at the above address. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager this realty action will become the final determination of the Department of the Interior.

Dated: September 30, 1983.

Kenneth G. Walker,

District Manager.

[FR Doc. 83-27424 Filed 10-6-83; 8:45 am]

BILLING CODE 4310-84-M

Wyoming; Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of Plats of Survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., September 23, 1983.

Sixth Principal Meridian

T. 47 N., R 60 W.

The plat representing the retracement of the South Dakota-Wyoming State Boudary between Mile Posts 71 and 73, the dependent resurvey and corrective dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 22, T. 47 N., R. 60 W., Sixth Principal Meridan, Wyoming, Group No. 448, was accepted September 20, 1983.

T. 51 N., R. 64 W.

The plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, T. 51 N., R 64 W., Sixth Principal Meridan, Wyoming, Group No. 432, was accepted September 20, 1983.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

T. 14 N., R. 84 W.

The plat, in five sheets, representing the dependent resurvey of portions of the exterior boundaries, a portion of the subdivisional lines, and the subdivision of sections 6, 12 and 13, T. 14 N., R. 84 W., Sixth Principal Meridian, Wyoming, Group No. 395, was accepted September 20, 1983.

This survey was executed to meet certain administrative needs of this Bureau.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: September 26, 1983.

Dennis D. Bland,

Acting Chief Cadastral Surveyor.

[FR Doc. 83-27365 Filed 10-6-83; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered Species Permit; Los Angeles Zoo et al.; Receipt of Applications

The following applicants have applied for permits to conduct certain activities with Endangered species. This notice is provided pursuant to Section 10(c) of the endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 2–11095

Los Angeles Zoo, Los Angeles, CA

The applicant requests a permit to import one male and one female captive-born mandrills (*Papio sphinx*) from Metro Toronto Zoo, Toronto, Canada, for enhancement of propagation.

PRT 2–11076

Donald J. King/USFWS, Reno, NV

The applicant requests a permit to take (capture) 50 young-of-the-year Pahranagat bony-tail chubs (*Gila robusta jordani*) annually for enhancement of propagation.

PRT 2–11136

Caribbean Islands National Wildlife Refuges, Boqueron, PR

The applicant requests a permit to take (tag females, examine nests, and relocate threatened nests) hawksbill sea turtles (*Eretmochelys imbricata*) and leatherback sea turtles (*Dermochelys coriacea*) on Isla de Culebra, Isla Culebrita, Cayo Norte and Cayo Luis Pena, Puerto Rico, for scientific research.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, OgOO N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

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 above address. Please refer to the file number when submitting comments.

Dated: September 30, 1983.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 83-27368 Filed 10-6-83; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Oil and Gas and Sulfur Operations on the Outer Continental Shelf; Receipt of Proposed Development and Production Plan; Texaco U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Texaco U.S.A. has submitted a development and production plan describing the activities it proposes to conduct as operator of Lease OCS–P 0315, offshore California. The purpose of this Notice is to inform the public that the Minerals Management Service (MMS) is considering approval of the plan and that it is available for public review and comment.

DATES: The plan may be reviewed weekdays, 8:00 a.m. to 3:00 p.m. Written comments must be received or postmarked by November 30, 1983.

ADDRESSES: The plan is available for public review at the Office of the Regional Manager, Pacific OCS Region, Minerals Management Service, Room 160, 1340 West 6th Street, Los Angeles, California 90017. Written comments may be mailed or hand-delivered to the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas W. Dunaway, Acting Regional Supervisor, Field Operations Office, Pacific OCS Region (213) 688–2087.

SUPPLEMENTARY INFORMATION: Section 25 of the Outer Continental Shelf Lands Act, 43 U.S.A. 1351, requires the MMS to make any development and production plans available for public review. Regulation 30 CFR 250.34 provides for the publication of a Notice that such a plan is available for review

Robert G. Paul,

Acting Regional Manager, Pacific OCS Region.

[FR Doc. 83-27348 Filed 10-6-83; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Compensated Intercorporate Hauling Operations; Intent To Engage in

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. *Parent Corporation and Address of Principal Office*

Lynden Incorporated, P.O. Box 3757, Seattle, Washington 98124–3757

2. *Wholly-Owned Subsidiaries Which Will Participate in the Operations and State(s) of Incorporation*

(i) LTI, Inc. (a Washington corporation), and
(ii) Lynden Transport, Inc. (a Washington corporation),
(iii) Lynden Forwarding, Inc. (a Washington corporation),
(iv) Dairy Express, Inc. (an Oregon corporation),
(v) Douglas Management Company, (an Alaska corporation),
(vi) Knik Construction Co., Inc. (an Alaska corporation),
(vii) Canadian Lynden Transport Ltd. (an Alberta Corporation),
(viii) Alaska Marine Lines, Inc. (a Washington corporation),
(ix) Lynden Air Freight, Inc. (a Washington corporation),
(x) Arctic Packaging & Logistics, Inc., (a Washington corporation), and
(xi) Lynden Financial Services, Inc. (a Washington corporation).

1. The parent corporation is Milton Bradley Company, a Massachusetts corporation with a principal office at 111 Maple Street, Springfield, Massachusetts 01105.

2. The wholly-owned subsidiaries of Milton Bradley Company which will participate in the intercorporate hauling operations are:

a. Playskool, Inc.—a Delaware corporation with principal offices at 4501 West Augusta Boulevard, Chicago, Illinois 60651
b. General Consumer Electronics, Inc.—a Massachusetts corporation with principal offices at 233 Wilshire Boulevard, Santa Monica, California 90401
c. The South Bend Toy Manufacturing Company, Inc.—an Indiana corporation with principal offices at 3300 West Sample Street, South Bend, Indiana 46626
d. Milton Bradley Canada, Inc.—a Canadian corporation with principal offices at 112 Adelaide Street East, Toronto, Ontario M5C 1K9, Canada

1. Parent corporation and address of principal office: Selfridge Cheese Company, Selfridge, ND 58568.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:

(i) Cheese Hauling, Inc. (a Wisconsin corporation)
(ii) Timberlake Chesse Co. (a South Dakota corporation)

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-27309 Filed 10-6-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30250]

Rail Carriers; Anthracite Railway, Inc.—Operation—In Emmaus Jct., Pottstown, and Tipton, PA; Modified Rail Certificate

Notice

September 29, 1983.

On July 29, 1983, notice was filed by the Anthracite Railway, Inc., for a modified certificate of public convenience and necessity under 49 CFR Part 1150 (Subpart C). That carrier is now authorized to provide service over a portion of the lines owned by the Commonwealth of Pennsylvania Department of Transportation. The lines to be operated are, as follows: (1) The Perkiomen Branch, USRA Line No. 906, from milepost 22.38 to milepost 38.23, a distance of 15.85 miles, interchanging with Consolidated Rail Corporation (Conrail) at Emmaus Jct., PA; (2) Colebrookdale Branch, USRA Line No. 909, from milepost 0.00 to milepost 8.60, a distance of 8.60 miles, interchanging with Conrail at Pottstown, PA; and (3) Kutztown Branch, USRA Line No. 910, from milepost 0.17 to milepost 4.29, a distance of 4.12 miles, interchanging with Conrail at Tipton, PA.

Applicant will operate these lines pursuant to a service agreement with the Commonwealth of Pennsylvania.

This notice shall be served upon the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and upon the American Short Line Railroad Association.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-27401 Filed 10-6-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30280]

Rail Carriers; Transkentucky Transportation Railroad, Inc.—Trackage Rights Over Chesapeake and Ohio Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Application accepted as complete and procedural schedule established.

SUMMARY: The Commission is accepting as complete the application of Transkentucky Transportation Railroad, Inc. (TTRI) for approval of a trackage rights agreement between TTRI and Chesapeake and Ohio Railway Company (C&O) involving approximately 11.4 miles of C&O track in Kentucky.

DATE: Written comments must be filed by November 7, 1983.

ADDRESS: An orginial and 10 copies of all statements referring to Finance Docket No. 30280 should be sent to:
Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and
Fritz R. Kahn, Esq., Suite 1100, 1660 L Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louise E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Decided: October 3, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-27400 Filed 10-6-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-36; Sub-No. 17

Rail Carriers; Orgeon Short Line Railroad Company and Union Pacific Railroad Company; Abandonment; In Lincoln, Blaine and Camas Counties, ID; Findings

The Commission has issued a certificiate authorizing the Oregon Short Line Railroad Company to abandon and the Union Pacific Railroad Company to discontinue service over a portion of railroad known as the Ketchum-Hill City Branch extending from railroad milepost 0.10 near Shoshone to milepost 15.65 near Richfield (on the Ketchum Branch) and milepost 0.08 near Richfield to the end of the line, milepost 44.46 near Fairfield (on the Hill City Branch), a total distance of 59.93 miles in Lincoln, Blaine, and Camas Counties, ID. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower lefthand corner of the envelope containing the offer "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-27582 Filed 10-6-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

National Institute of Justice

Advisory Board; Meeting

Notice is hereby given that the Naitonal Institute of Justice Advisory Board will hold a meeting on October 20, 1983 from 9:00 A.M. to 5:00 P.M. and on October 21, 1983 from 9:00 A.M. to 12:00 P.M. at the Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, Virginia.

The major items of business will include a briefing on FY '83 funding activities, FY '84 program priorities, and FY '84 Advisory Board activities.

The meeting is open to the public. For further information, please contact Betty M. Chemers, National Institute of Justice, U.S. Department of Justice, Washington, D.C. 20531 (202/724–2942).

Dated: September 30, 1983.

James K. Stewart,

Director, National Institute of Justice.

[FR Doc. 83-27366 Filed 10-6-83; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of forms under review: On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new forms, revisions, extensions (burden change), extensions (no change), or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in. Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The Agency form number, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small business or organizations are affected.

The standard industrial classification (SIC) codes, referring to specific respondent groups that are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clerance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget.

Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
Job Training Longitudinal Survey (JTLS)
JTLS 1A, and 20 and 21
Quarterly
State or local governments; non-profit organizations
1,388 responses; 162 hours; 3 forms

ETA will use the quarterly administrative data to determine the number and characteristics of persons who enroll and terminate from the Job Training Partnership Act (JTPA) Title IIA and III programs.

Extension

Mine Safety and Health Administration
Noise Data Report Form
1219-0037
Semiannully
Businesses or other for profit and small businesses or organizations
5,000 respondents; 78,087 hours

Requires coal mine operators to report to MSHA the environmental noise levels to which each miner is exposed. When noise reports indicate excessive noise levels, mine operators are required to institute engineering or administrative controls which are designed to either reduce the noise levels or reduce the miner's exposure to noise levels.

Reinstatement

Employment Standards Administration
Service Contract Act Recordkeeping and Reporting Requirements—
29 CFR Part 4
WH-601
On Occasion
Businesses or other for-profit; Small businesses or organizations
19,900 responses; 13,658 hours

Recordkeeping and incidental reporting requirements under SCA regulations for employers performing on service contracts entered into with the Federal Government.

Signed at Washington, D.C. this 4th day of October, 1983.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 83-27460 Filed 10-6-83; 8:45 am]

BILLING CODE 4510-27-M, 4510-30-M, 4510-43-M

[TA-W-14,707]

Smith-Jones, Inc., SJC Division, Elyria, Ohio; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 6, 1983 in response to a worker petition received on May 25, 1983 which was filed by the International Molders and Allied Workers Union on behalf of workers at the Elyria, Ohio plant of the SJC Division of Smith-Jones, Inc. The workers produced air conditioner and heater units.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 28th day of September 1983.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 83-27458 Filed 10-6-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-14,704]

Westinghouse Electric Corp., Relay-Instrument Division, Coral Springs, Florida; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 6, 1983 in response to a petition received on May 23, 1983 which was filed on behalf of workers at Westinghouse Electric Corporation, Relay-Instrument Division, Coral Springs, Florida. No public hearing was requested and none was held.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 30th day of September 1983.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 83-27459 Filed 10-6-83; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-13,912, 13,913]

American Motors Corporation, American Center Facility and Amtek Facility, Southfield, Michigan and Detroit, Michigan; Negative Determination Regarding Application for Reconsideration

By an application dated August 29, 1983, the company requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers at American Motors Corporation's American Center Facility in Southfield, Michigan and Amtek Facility in Detroit, Michigan. The determination was published in the **Federal Register** on July 29, 1983 (48 FR 34543).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company claims that the Department's denial of service workers is based on a narrow reading of the regulations and is contrary to the general proposition that remedial statutes should be liberally construed.

The Department's review shows that workers at the American Center and Amtek facilities are engaged in administrative support services and research and development support services, respectively, for AMC manufacturing operations and as such do not produce an article within the meaning of Section 222(3) of the Trade Act of 1974.

The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by the Act; and this determination has been upheld in the U.S. Court of Appeals. Therefore, the only way workers at the instant facilities may be certified is if their

separation from employment was caused importantly by a reduced demand for their services from a firm which produces an article and which substantially beneficially owns or controls the service workers' firm. In addition, the reduction in demand for services must be determined to have originated at a production facility whose workers independently meet the statutory criteria for certification, and that reduction must directly relate to the product adversely affected by increased imports. Although the American Center and Amtek are integral facilities of the American Motors Corporation the separation of their workers cannot be related to a production facility whose workers independently meet the statutory criteria for certification. In June 1983, adjustment assistance was denied to workers engaged in the production of automobiles at American Motors assembly plants including the Kenosha plant because increased imports could not be substantiated as having contributed importantly to worker separation. Service workers may not be certified as eligible for trade adjustment assistance benefits unless these was an important causal nexus between increased imports and the layoff of service workers. *R. E. Abbott, et al.* v. *Donovan*, U.S. Court of International Trade, Court No. 81-1-00028, August 9, 1983.

The company argues that certification is warranted because the shift from rear wheel to front wheel drive vehicles at Kenosha resulted in decreased demand for services from the American Center Facility and the Amtek facility.

The change to front wheel drive technology is an industry-wide phenomenon as is reflected by the increased domestic production of front wheel drive car lines and related employment changes are the inevitable result of the new technology rather than increased import competition. The Trade Act of 1974's worker adjustment assistance provisions were not intended to cover worker unemployment due to technological factors.

The Committee on Finance of the U.S. Senate reporting on the Trade Act of 1974 states:

"Total or partial separations that would have occurred regardless of the level of imports, e.g., those resulting from domestic competition, seasonal, cyclical, or technological factors are not intended to be covered by the program." U.S. Senate Report No. 93-1293 p. 133.

The applicable investigation period for petition TA-W-13,672, filed on behalf of workers of the Kenosha plant, was model year (MY) 1983. The denial of trade adjustment assistance for workers of the Kenosha plant was based on findings that showed production increases of automobiles axles, gears, stampings and forgings during the July-February period of MY 1983 compared to the same period of MY 1982. Further, the average employment of all production workers and support workers at Kenosha increased during the same period.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 26th day of September 1983.

Carolyn M. Golding,

Director, Unemployment Insurance Service, UIS.

[FR Doc. 83-27457 Filed 10-6-83; 8:45 am]

BILLING CODE 4510-30-M

High Unemployment Area Classifications Under Pub. L. 98-8; Additions to the List

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The additions to the list of high unemployment areas are effective on September 30, 1983.

SUMMARY: The purpose of this notice is to announce the addition of 7 civil jurisdictions to the list of high unemployment areas. This is the final update to be made by the Department of Labor to the list of high unemployment areas.

FOR FURTHER INFORMATION CONTACT: James W. Higgins, United States Employment Service, Attention: TEEPA, 601 D Street, NW., Washington, D.C. 20213. Telephone: (202) 376-6700.

SUPPLEMENTARY INFORMATION: Section 101(a)(3) of Public Law 98-8, 97 Stat. 13, 29 (March 24, 1983) (the "Act") requires the Assistant Secretary for Employment and Training, U.S. Department of Labor, to classify civil jurisdictions as having high unemployment and to publish a list of these jurisdictions together with descriptions thereof no later than 30 days after enactment of the Act. That list was published on April 22, 1983 (48 FR 17456).

The Act also requires that the list of high unemployment areas be updated on a monthly basis thereafter, by adding civil jurisdictions that the Assistant secretary deems to meet the criteria necessary for classification. The areas described below have been classified by the Assistant Secretary as high unemployment areas and added to the list of high unemployment areas, effective September 30, 1983. These areas are in addition to the areas of high unemployment previously published on April 22, 1983 (48 FR 17456), June 10, 1983 (48 FR 26921), July 19, 1983 (48 Fr 32892), August 2, 1983 (48 FR 35040), and September 2, 1983 (48 FR 40021).

Because Congress appropriated funds under Public Law 98-8 to take care of the needs of areas having high unemployment during Fiscal Year 1983, this is the final list of high unemployment areas which will be issued by the Department of Labor. Agencies should refer to this list in obligating and/or expending funds from appropriations covered by this Act.

To the extent it is necessary to do so, this notice amends the notice of May 20, 1983 (48 FR 22883).

Signed at Washington, D.C. on September 27, 1983.

Albert Angrisani,

Assistant Secretary of Labor.

ADDITIONS TO THE LIST OF HIGH UNEMPLOYMENT AREAS, SEPTEMBER 30, 1983

High unemployment area	Civil jurisdiction included
Oklahoma: Balance of Tulsa County	Tulsa County less Tulsa City.
Utah: Uintah County	Uintah County.
Wyoming:	
Big Horn County	Big Horn County.
Carbon County	Carbon County.
Casper City	Casper City in Natrona County.
Fremont County	Fremont County.
Balance of Natrona County	Natrona County less Casper City.

[FR Doc. 83-27458 Filed 10-6-83; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506:

Date: October 24-25, 1983
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications submitted to Research Resources: American Studies I Panel.

Division of Research Programs, for projects beginning after April 1, 1984.

Date: October 31, 1983
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications submitted to Research Resources: Literature, Libraries, & Bibliography Panel, Division of Research Programs, for projects beginning after April 1, 1984.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commerical of financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United State Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer. National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 83-27440 Filed 10-6-83; 8:45 am]
BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Atmospheric Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Atmospheric Sciences (ACAS).
Date: October 26-28, 1983.
Time: 9:00 a.m.—5:00 p.m.
Place: Room 642, National Science Foundation, 1800 G Street NW.,Washington, D.C. 20550.

Type of Meeting: Closed—October 26 (all day) and October 27 (9:00 a.m.—12:00 Noon). Open—October 27 (1:00 p.m.—5:00 p.m.) and October 28 (all day).

Contact: Dr. Eugene W. Bierly, Division Director, Division of Atmospheric Sciences, Room 644, National Science Foundation, Washington, D.C. 20550, telephone: (202) 357-9874.

Purpose of Committee: The Advisory Committee for Atmospheric Sciences provides advice, recommendations, and oversight concerning support for research and research-related activities in the atmospheric sciences area. Provides expert assistance in carrying out external oversight which is concerned with the examination of decisions made, procedures and polcies in effect and focuses on operations and activities, priorities, program balance and selection of awards.

Agenda: *October 27—9:00 a.m. to 5:00 p.m., and October 27—9:00 a.m. to 12:00 Noon (Closed) Rooms 642 and 628.*

Committee review of the Meteorology and Solar Terrestrial Programs, including examination of proposal jackets, reviewer comments and other privileged material.

October 27, 1983 (Open 1:00 p.m.—5:00 p.m.) Room 642:

1:00 p.m.—Remarks by Chairman, ACAS, and Division Director, ATM.
1:30 p.m.—Remarks by AAD/AAEO.
2:00 p.m.—Approval of Minutes from ACAS Meeting of April 7-8, 1983.
2:05 p.m.—Presentation of Review Reports to ACAS.
2:35 p.m.—Meeting of Subcommittee on Upper Atmosphere Facilities (SCUAF) October 24-25, 1983.
2:45 p.m.—Long Range Planning for ATM/Budgeting Status/Proposed ATM Program Reveiw.
4:00 p.m.—National STORM (STormscale Operational and Research Meteorology) Program.
4:30 p.m.—NAS global Tropospheric Chemistry Report/National Acid Precipitation Program Assessment.
5:00 p.m.—Interactive Computing Activities.

October 28, 1983:

9:00 a.m.—UCAR Activities and Issues.
9:30 a.m.—UCAR Activities and Issues
10:15 a.m.—Coffee Break
10:30 a.m.—Update on Supercomputers
11:00 a.m.—DOD Instrumentation Response.
11:20 a.m.—Status of Atmospheric Sciences Renewal Proposal Experiment.
11:40 a.m.—Discussion of ACAS Advice.
12:00 p.m.—Lunch.
1:00 p.m.—International Activities.
2:00 p.m.—Participation in Educational Activities.
2:30 p.m.—Program for Spring ACAS Meeting, 1984: Date, Agenda Items, (Procedure for Review of Centers and Facilities Section). Adjourn General Meeting.

Reason for Closing: The meeting will deal with a review of grants and declinations in which the Committee will review materials containing the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This meeting will also include a review of peer review documentation pertaining to applicants. Any non-exempt materials that may be discussed at this meeting (proposals that have been awarded) will be inextricably intertwined with the discussion of exempt materials and no further separation is practical. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), the Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,
Committee Management Coordinator.

October 4, 1983.

[FR Doc. 83-27376 Filed 10-6-83; 8:45 am]
BILLING CODE 7555-01-M

Advisory Panel for Physiology, Cellular and Molecular Biology, Subpanel on Cell Biology, Meeting

In accordance with the Federal Advisory Committe Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subpanel on Cell Biology, of the Advisory Panel for Physiology, Cellular, and Molecular Biology.

Date and Time: October 26, 27, and 28, 1983; 9:00 a.m. to 5:00 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Wallace M. LeStourgon, Program Director, Cell Biology Program, Room 332, National Science Foundation, Washington D.C. 20550, Telephone: 202/357-7474.

Purpose of Subpanel: To provide advise and recommendations concerning support for research in Cell Biology.

Agenda: To review and evaluate research proposals as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemption (4) and (6) of 5 U.S.C. 552b(c) Government in the Sunshine Act.

Authority to Close: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. R. Winkler,

Committee Management Coordinator.

October 4, 1983.

[FR Doc. 83-27379 Filed 10-6-83; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for PCM, Subpanel on Genetic Biology, Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subpanel on Genetic Biology of the Advisory Panel for Physiology, Cellular and Molecular Biology.

Date and Time: October 24-26, 1983, 9:00 a.m.-5:30 p.m.

Place: Room 643, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Philip D. Harriman, Program Director, Genetic Biology Program, Room 329, National Science Foundation, Washington, D.C. 20550, telephone (202) 357-9687.

Purpose of Subpanel: To provide advice and recommendations concerning support for research in genetic biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

October 4, 1983.

[FR Doc. 83-27381 Filed 10-6-83; 8:45 am]

BILLING CODE 7555-01-M

Executive Committee of the Advisory Committee for Ocean Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463 as amended, the National Science Foundation announces the following meeting:

Name: Executive Committee of the Advisory Committee for Ocean Sciences.

Date and Time: October 27 and 28, 1983—9:00 a.m. to 5:00 p.m. each day.

Place: Room 643, National Science Foundation, 1800 G Street, NW., Washington, D.C.

Type of Meeting: Open.

Contact Person: Dr. M. Grant Gross, Director, Division of Ocean Sciences, Room 609, National Science Foundation, Washington, D.C. 20550. Telephone: (202) 357-9639.

Summary Minutes: May be obtained from the contact person.

Purpose of Committee: To provide advice and recommedations concerning oceanographic research and its support by the NSF Division of Ocean Sciences.

Agenda:

October 27, 9:00 a.m.—

I. *Opening Remarks, Welcome to the Committee, and General Introductions.* Dr. M. G. Gross and Dr. V. Alexander, Chairperson.

II. *Adoption of the Agenda.* Dr. Alexander and Dr. Gross will present the agenda, requesting suggestions for additions, deletions or modifications.

III. *Approval of Minutes of the 28-29 October 1982 Executive Committee Meeting.*

IV. *Update on the FY 1984 Budget and Implications for Ocean Sciences.* Dr. Bridgewater and Dr. Gross will discuss the budget for OCE and its comparison with other AAEO divisions, including the current outlook for special initiatives in 1984 and beyond.

V. *Reorganization of NSF's Ocean Drilling Program. Topics to be discussed are:*

Current management plans in the Division.
Current management plans in the Community.
Drilling vessel procurement.
Status of U.S. science program.
Estimates of future ocean drilling projects. Dr. Gross and Ms. S. Toye.

VI. *Ocean Sciences Research Support Section—Information Items and Update.* Dr. R. Wall and Staff.

VII. *Oceanographic Facilities Support Section—Information Items and Update.* Mr. R. La Count and Staff.

VIII. *UNOLS Expeditionary Planning Committee.* Dr. G. Shor.

IX. *DOD/ONR/Ocean Sciences Equipment/Instrumentation Program Recent Results and Future Plans.* ONR Staff.

X. *Broadened Responsibility of OCE (and other NSF elements).* Four year research, education; instrumentation at undergraduate institutions, small business, international programs).

12:00 Noon—Lunch.

1:00 p.m.—

XI. *OFS Oversight Review—Preliminary Report.* Dr. W. Merrell.

XII. *Update on Progress Concerning Ocean Sciences Computing Requirements.* Dr. P. Hacker.

XIII. *Update on Ocean Climate Research Activities and Planning.* OSRS Staff.

XIV. *Discussion: How the Executive Committee Might Best Perform Its Functions.* Dr. Alexander.

Some possibilities are: More reliance on subcommittees? Meet more often? Meet once a year for three days? Issue papers distributed prior to meetings? (Other?)

October 28, 9:00—

XV. *Enchancement of Ocean Sciences Through Support for Undergraduate Institutional Faculty and Students.* Committee and Staff.

XVI. *NSF's Proposal Review Process and UNOLS Expeditionary Planning.* Committee and Staff.

12:00 Noon—Lunch.

1:00 p.m.

XVII. *Budgetary and Long Range Planning Discussion Items.* Committee and Staff.

Core program funding.
Under capitalization.
Effects of soft-money dependency.
Ship replacement.
High latitude research.
Ocean climate research.

5:00 p.m.—Adjourn.

M. Rebecca Winkler,

Committee Management Coordinator.

October 4, 1983.

[FR Doc. 83-27378 Filed 10-6-83; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee for Upper Atmospheric Facilities; Advisory Committee for Atmospheric Sciences

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee for Upper Atmospheric Facilities.

Date: October 24 and 25, 1983.

Time: 9:00 a.m.-5:00 p.m.

Place: Room 642, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of Meeting: Open.

Contact: Dr. Richard A. Behnke, Program Manager, Upper Atmospheric Facilities, Division of Atmospheric Sciences, Room 644, National Science Foundation, Washington, D.C. 20550, telephone: (202) 357-7390.

Purpose of Committee: The Subcommittee for Upper Atmospheric Facilities provides advice, recommendations, and oversight concerning support of the four incoherent scatter radars for research and research-related activities in the atmospheric sciences area. Provides expert assistance in carrying out external oversight which is concerned with the examination of decisions made, procedures and policies in effect and focuses on operations and activities, priorities, program balance and selection of awards.

Agenda

October 24, 1983.

9:00 a.m.—Opening Remarks
9:15 a.m.—Scientific Highlights
a. Sondrestromfjord
b. Millstone Hill
c. Arecibo Observatory
d. Jicamarca Observatory
12:00 noon—Lunch

1:00 p.m.—Status Reports, Operations Experience, Response to Proposals
a. Sondrestromfjord
b. Millstone Hill
c. Arecibo Observatory
d. Jicamarca Observatory
3:00 p.m.—Budget for FY 1984
a. Sondrestromfjord
b. Millstone Hill
c. Arecibo Observatory
d. Jicamarca Observatory
October 25, 1983.
8:30 a.m.—Instrumentation and Upgrade Needs
a. Sondrestromfjord
b. Millstone Hill
c. Arecibo Observatory
d. Jicamarca Observatory
10:30 a.m.—General Discussion
1:30 p.m.—Working Session: Preparation of Report
5:00 p.m.—Adjourn

M. Rebecca Winkler,

Committee Management Coordinator.

October 4, 1983.

[FR Doc. 83-27375 Filed 10-6-83; 8:45 am]

BILLING CODE 7555-01-M

Subpanel on Molecular Biology, Group A, of the Advisory Panel for Physiology, Cellular, and Molecular Biology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meetings:

Name: Subpanel on Biophysics/Biochemistry Programs, Group A, of the Advisory Panel for Physiology, Cellular, and Molecular Biology.

Date and Time: October 24 & 25, 1983, 9:00 a.m. to 5:00 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G St, NW, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Kin-Ping Wong, Program Director, Biophysics Program, Room 329, National Science Foundation, Washington, DC 20550.

Purpose of Subpanel: To provide advice and recommendations concerning support for research in Biophysics/Biochemistry Programs.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are with exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Office pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. R. Winkler,

Committee Management Coordinator.

October 4, 1983.

[FR Doc. 83-27380 Filed 10-6-83; 8:45 am]

BILLING CODE 7555-01-M

Subpanel on Neurobiology Group "C"; Meeting

In accordance with the Federal Advisory Committee Act, as amended Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subpanel on Neurobiology of the Advisory Panel for Behavioral and Neural Sciences.

Date and Time: October 26, 27, and 28, 1983: 9:00 a.m. to 5:00 p.m. each day.

Place: Room 1224, National Science Foundation, 1800 G Street, NW., Washington, D.C.

Type of Meeting: Closed.

Contact Person: Dr. Michael D. Oberdorfer, Staff Associate, Sensory Physiology and Perception Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone 202/357-7471.

Purpose of Subpanel: To provide advice and recommendations concerning support for research in neurobiology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

October 4, 1983.

[FR Doc. 83-27377 Filed 10-6-83; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Class-9 Accidents; Meeting

The ACRS Subcommittee on Class-9 Accidents will hold a meeting on October 28, 1983, Room 1046 at 1717 H Street NW., Washington, D.C.

In accordance with the procedures outlined in the **Federal Register** on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Friday, October 28, 1983—8:30 a.m. until the conclusion of business. The Subcommittee will review the severe accident research program (SARP) to determine if the program elements are addressing the correct issues to resolve the severe accident issue.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Gary Quittschreiber or Staff Engineer, Mr. Alan B. Wang (Telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., e.d.t.

Dated: October 4, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-27429 Filed 10-6-83; 8:45 am]

BILLING CODE 7590-01-M

[DD-83-14]

Commonwealth Edison Company et al.; Shipment of Irradiated Nuclear Fuel From West Valley, N.Y.; Director's Decison

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, on September 30, 1983, denied the request for action filed by Marvin Resnikoff and Anthony

Celebrezze on behalf of the Sierra Club and the Attorney General of the State of Ohio, respecitively. By letters dated August 24, 1983 and September 9, 1983 the petitioners requested that the Commission institute proceeding to amend, modify, revoke, or suspend licenses of the New York State Energy Research and Development Authority, Wisconsin Electric Power Company and Commonwealth Edison Company.

The reasons for this denial are explained in the "Director's Decision Under 10 CFR 2.206" (DD-83-14) which is available for public inspection in the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and the Local Public Document Rooms for the Western New York Nuclear Service Center, the Point Beach Nuclear Plant, and the Dresden Nuclear Power Station.

A copy of the decision will be filed with the Secretary for the Commission for its review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the decision will become the final action of the Commission twenty-five (25) days after issuance, unless the Commission on its own motion institutes review of the decision within that time.

Dated at Silver Spring, Maryland, this 30th day of September 1983.

For the Nuclear Regulatory Commission.

John G. Davis,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 83-27830 Filed 10-6-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Company; Consideration of Issuance of Amendment Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-31 and DPR-41, issued to Florida Power and Light Company (the licensee), for operation of the Turkey Point Plant Unit Nos. 3 and 4 located in Dade County, Florida.

These amendments would change the Technical Specifications to support the integrated program for vessel flux reduction to resolve the pressurized thermal shock issue and to take credit for operation with the new steam generators in an unplugged (maximum of five (5) percent tube plugging) configuration. Changes are requested to: (1) Increase the hot channel $F_{\Delta H}$ limit from 1.55 to 1.62; (2) increase the total peaking factor F_Q limit from 2.30 to 2.32; (3) change the overpower ΔT setpoints and thermal-hydraulic limit curves; and (4) delete restrictions and limits placed on the old steam generators to allow for operation with tubes plugged in excess of five (5) percent in accordance with the licensee's application for amendments dated August 19, 1983 as supplemented September 9, 1983.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards for determining whether license amendments involve no significant hazards considerations by providing certain examples (48 FR 14870). The increase in the hot channel $F_{\Delta H}$ limit and the total peaking factor F_Q limit is similar to example (vi) of changes which are not likely to involve significant hazards considerations: A change which either may result in some increase to the probability or consequences of a previously analyzed accident or reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: For example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

The reduction in the safety margin resulting from the increase in the $F_{\Delta H}$ and F_Q limits are addressed in the safety evaluation provided with the submittal and indicate: (1) The calculated peak clad temperature of 1605° F and 1972° F for small and large break loss of coolant accidents respectively, are within the maximum limit of 2200° F specified in 10 CFR 50.46, "Acceptance Criteria for Emergency Core Cooling Systems (ECCS) for Light Water Nuclear Power Reactors"; (2) additional departure from nucleate boiling ratio margin is identified for Overtemp ΔT and loss of flow conditions to accommodate the reduction in margin resulting from increasing the $F_{\Delta H}$ loss of limit and is within the Final Safety Analysis Report (FSAR) design basis; (3) for breaks up to and including the double-ended severance of a reactor coolant pipe the ECCS will meet the acceptance criteria of 10 CFR 50.46; and (4) the overpower ΔT setpoints will be more restrictive to provide protection using the recalculated core limits and error allowances provided in the safety evaluation which indicate the safety margin is within the acceptance criteria of the Standard Review Plan.

The change in the Overpower ΔT setpoints and thermo-hydraulic limit curves are similar to example (ii) of changes not likely to involve significant hazards considerations: A change that constitutes an additional limitation or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. The changes requested in the setpoint and thermal-hydraulic limit curves are all in the conservative direction and constitute a more stringent limitation.

The deletion of the technical specifications relating to the old steam generators is similar to example (v) of changes not likely to involve significant hazards considerations: Upon satisfactory completion of construction in connection with an operating facility, a relief granted from an operating restriction that was imposed because the construction was not yet completed satisfactorily. This is intended to involve only restrictions where it is justified that construction has been completed satisfactorily. The deletions requested are to remove the restrictions placed on the use of the old steam generators with tubes plugged in excess of five (5) percent. License conditions were placed on the Turkey Point Plant, Units 3 and 4, which requires a new ECCS analysis be performed if credit is to be taken for the unplugged configuration (maximum of five (5) percent tube plugging) for the new steam generators upon satisfactory completion of the construction associated with replacement of the steam generators. Construction has been satisfactorily completed and the licensee's submittal includes new ECCS analysis which assumes a maximum tube plugging of five (5) percent. The results of the new analysis indicate that for breaks up to and including the double-ended severance of a reactor coolant pipe, the ECCS can perform its function and is within the acceptance criteria of 10 CFR 50.46 which demonstrates that the

restrictions placed on the old steam generators are no longer applicable and the new steam generators function satisfactorily.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attn: Docketing and Service Branch.

By November 8, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the basis for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments request involves no significant hazards consideration, the Commission may issue the amendments and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission takes this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga, Chief, Operating Reactors Branch No. 1, Division of Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Harold F. Reis, Esquire, Lowenstein, Newman, Reis and Axelrad, 1025 Connecticut Avenue, N.W., Washington, D.C. 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Environmental and Urbana Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Bethesda, Maryland, this 3rd day of October 1983.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 83-27431 Filed 10-6-83; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

Domestic Mail Classification Schedule and Rate Schedule Changes for ZIP+4 Mail

On December 8, 1982, the United States Postal Service requested the Postal Rate Commission to submit to the Governors of the Postal Service a recommended decision on changes in the Domestic Mail Classification Schedule to establish new First-Class Mail subclasses for regular ZIP+4 mail and for ZIP+4 post cards, and to establish initial rates for the new subclasses. The request was submitted pursuant to Chapter 36, Title 39, United States Code. An explanation and an invitation to participate in Commission Docket No. MC83-2 was published in the **Federal Register** by the Postal Rate Commission on December 15, 1982 (47 FR 56221-56222).

On September 23, 1983, the Postal Rate Commission issued an Opinion and Recommended Decision in Docket No. MC83-2. The Commission recommended that new First-Class Mail rate categories be established for regular ZIP+4 mail and for ZIP+4 post cards. The rate categories provide for 0.9-cent discounts for nonpresorted ZIP+4 mail, and 0.5-cent discounts for presorted ZIP+4 mail. In order to qualify for the discounts, the address on the mail pieces must include a proper ZIP+4 code. The mail must be presented at prescribed times and places, and must be tendered in bulk (250 pieces for nonpresorted mail and 500 pieces for presorted mail). In addition, the pieces must be machinable and be suited to processing on the Postal Service's optical character reader and bar code sorter equipment. Finally, postage must be paid in a manner not requiring cancellation.

The Governors of the Postal Service decided to approve the Commission's recommended decision, and to order the recommended changes into effect on a permanent basis, pursuant to 39 U.S.C. 3625, on October 3, 1983. The Board of Governors concurrently determined that these changes would become effective at 12:01 a.m. on October 9, 1983. (The Governors' Decision, the record of the Commission's hearings, and the Commission's Recommended Decision may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Governors' Decision and the Commission's Opinion and Recommended Decision are available for inspection in the Library at Headquarters, United States Postal Service, 475 L'Enfant Plaza West SW., Washington, D.C. 20260-1641.)

In accordance with these actions by the Governors and the Board of Governors, the Postal Service hereby gives notice that the following rate and classification changes become effective at 12:01 a.m., October 9, 1983.

1. Rate Schedule A-1 has been fully revised to read as follows:

SCHEDULE A-1.—FIRST CLASS AND BUSINESS REPLY

Mail type	Postage rate unit	Rate		
		Regular (cents)	Presorted [1] (cents)	
			5-digit	Carrier route
First Class:				
Regular letters	First ounce	20	17	16
	Each additional ounce	[2] 1	17	16
ZIP+4 rate letters [3]	First ounce	19.1	16.5	(*)
	Each additional ounce	17	17	(*)
Regular cards	Piece	13	12	11
ZIP+4 rate cards [3]	Piece	12.1	11.5	(*)
Business Reply [4]	With advance deposit account	5		
	Without advance deposit account	18		
Nonstandard Surcharge [4]		9		

[1] Presorted first-class mail must be presented in a single mailing of 500 or more pieces properly prepared and presorted. The higher presort rate applies only to each piece of a group of ten or more pieces destined for the same five-digit ZIP Code or each piece of a group of fifty or more pieces destined for the same three-digit ZIP Code. The lower presort rate applies only to mail presorted to carrier route, with a minimum of 10 pieces per route. A mailing fee of $40 must be paid once each calendar year at each office of mailing by any person who mails presorted first-class mail.

[2] Rate applies through 12 ounces. Heavier pieces are subjet to priority mail rates.

[3] ZIP+4 rate first-class mail must be presented properly prepared in a single mailing of 250 pieces for nonpresort and 500 pieces for presort. Each piece in the mailing must meet all the eligibility requirements.

[4] Mail pieces presorted to carrier route and meeting all the requirements for the ZIP+4 discounts may be counted toward the minimum required for eligibility for the ZIP+4 discount, although there is no distinct ZIP+4 carrier route presorted mail rate.

[5] Rates are applied on a per-piece basis in addition to regular postage. A fee of $40 must be paid once each calendar year for each business-reply permit. An accounting charge must be paid once each calendar year for each business-reply advance deposit account.

[6] Applies to the first ounce only

2. In the Domestic Mail Classification Schedule, sections 100.020, 100.922, 100.031, 100.043, 100.080, and 100.100 have been amended, and sections 100.0211 and 100.047 have been added, as follows. New material is underscored, and deleted material is set out in brackets.

Classification Schedule 100 FIRST-CLASS MAIL

* * * * *

100.020 *Regular Mail*

Regular *F*[f]irst-*C*[c]lass *M*[m]ail consists of mailable matter posted at *F*[f]irst-*C*[c]lass regular rates, weighing 12 ounces or less, and not mailed or eligible for mailing under sections *100.0201*, 100.021, *100.0211*, 100.022, *100.0221*, 100.023, or 100.024.

100.0201 ZIP+4 Rate Category Regular Mail

ZIP+4 rate category regular mail consists of pieces which meet the following eligibility requirements and the preparation requirements in section 100.047:

a. Bear a proper ZIP+4 code.

b. Be presented in mailings of 250 or more pieces.

c. Meet machinability criteria as prescribed by the Postal Service.

d. Meet address readability specifications for applicable mail processing equipment as prescribed by the Postal Service.

e. Have postage paid in a manner not requiring cancellation.

100.0211 ZIP+4 rate category post cards

A ZIP+4 rate category post card is a privately printed mailing card for the transmission of messages which meets the eligibility and preparation requirements in sections 100.0211b, 100.043, and 100.047.

a. Double post cards may be mailed as ZIP+4 rate category post cards. A double post card consists of two attached cards, one of which may be detached by the receiver and returned by mail as a single post card.

b. ZIP+4 rate category post cards must:

i. Bear a proper ZIP+4 code.

ii. Be presented in mailings of 250 or more pieces; or, if presorted, in mailings of 500 or more pieces.

iii. Meet machinability criteria as prescribed by the Postal Service but may not exceed any of the following dimensions:

(1) length not greater than 6 inches;

(2) width not greater than 4¼ inches: or,

(3) thickness not greater than 0.0095 inch and uniform.

iv. Meet address readability specifications for applicable mail processing equipment as prescribed by the Postal Service.

v. Have postage paid in a manner not requiring cancellation.

* * * * *

100.022 Presorted Mail

Presorted first-class mail is first-class mail other than zone rated (priority) mail which is presented in a single mailing of 500 or more pieces, properly prepared and presorted.

100.0221 ZIP+4 Rate Category Presorted Mail

ZIP+4 rate category presorted mail consists of pieces which meet the following eligibility requirements and the preparation requirements in section 100.047:

a. Bear a proper ZIP+4 code.

b. Be presented in mailings of 500 or more pieces.

c. Meet machinability criteria as prescribed by the Postal Service.

d. Meet address readability specifications for applicable mail processing equipment as prescribed by the Postal Service.

e. Have postage paid in a manner not requiring cancellation.

* * * * *

100.031 Cards exceeding the maximum post card dimensions set forth in section 100.021c *or 100.0211b for ZIP+4 rate category cards* may be mailed only under sections 100.020, 100.022, *100.201 and 100.0221* as appropriate.

* * * * *

100.043 Postal and post cards, *including ZIP+4 rate category post cards,* with any of the following four characteristics are not mailable unless prepared as prescribed by the Postal Service:

a. Numbers or letters unrelated to postal purposes appearing on the address side of the card:

b. Punched holes;

c. Vertical tearing guide;

d. An address portion which is smaller than the remainder of the card.

* * * * *

100.047 Pieces mailed under sections 100.0201, 100.0211 and 100.0221 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service.

b. All pieces in a mailing must bear markings as required by the Postal Service.

c. Pieces not within the same postage increment may be mailed as ZIP+4 rate category mail only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

d. Pieces mailed at presorted ZIP+4 rate category rates must be properly prepared and presorted as prescribed by the Postal Service.

100.080 *F*[f]irst-*C*[c]lass *M*[m]ail, except, E-COM *and except as otherwise noted,* will receive the following additional services upon payment of the appropriate fees:

	Classification schedule
a. Address correction	SS-1
b. Business reply mail (*except ZIP+4 rate category mail*)	SS-2
c. Certificates of mailing	SS-4
d. Certified mail	SS-5
e. C.O.D.	SS-6
f. Insured mail	SS-9
g. Registered mail (*except ZIP+4 rate category mail*)	SS-14
h. Special delivery	SS-17

* * * * *

100.100 A presorted mailing fee as set forth in Rate Schedule 1000 must be paid once each calendar year at each office of mailing by any person who mails presorted mail, *including presorted ZIP+4 rate category mail.*

(39 U.S.C. 3625)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 83-27436 Filed 10-6-83; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice CM-8/673]

Advisory Committee on Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet on November 10, 1983, at 9:00 a.m. in Room 1408 of the Department of State.

The Advisory Committee advises the Bureau of Public Affairs, and in particular the Office of the Historian, concerning problems connected with preparation of the documentary series entitled *Foreign Relations of the United States* and other responsibilities of that Office. Of particular importance are editorial and publishing practice and questions related to declassification of official records as specified in Executive Order 12356 (April 2, 1982).

In accordance with Section 10(d) of the Advisory Committee Act (Pub. L. 92-463) it has been determined that certain discussions during the meeting will necessarily involve consideration of matters recognized as not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities be withheld from disclosure. The meeting will therefore be closed when such discussions takes place, at 2:00 p.m., Thursday, November 10.

Persons wishing to attend the meeting should come before 9:00 a.m. on November 10 to the Diplomatic Entrance of the Department of State at 22 nd and C Streets, NW., Washington, D.C. They will be escorted to room 1408 and at the conclusion of the open portion of the meeting back to the Diplomatic Entrance.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, D.C. 20520; telephone (202) 632-8888.

Dated: September 27, 1983.

William Z. Slaney,

Executive Secretary.

[FR Doc. 83-27346 Filed 10-6-83; 8:45 am]

BILLING CODE 4710-11-M

[Public Notice CM-8/672]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea Working Group of Lifesaving Applicances; Meeting

The Working Group on Lifesaving Appliances of the Subcommittee on Safety of Life at Sea (SOLAS) will meet on October 25, 1983 at 1:30 p.m. in Room 1319 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593.

The purpose of the meeting will be to:

a. Discuss the report of the 48th Session of the International Maritime Organization (IMO) Maritime Safety Committee (MSC)

b. Discuss the recently adopted revision of Chapter III of the International Convention on the Safety of Life at Sea, 1974 (SOLAS 1974). This revision is part of the second set of Amendments to SOLAS 1974, expected to come into force July 1, 1986.

c. Discuss MSC 84/25, Annex 13 "Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Lifesaving Appliances and Arrangements", and MSC 48/25, Annex 14 "Recommendation on Testing of Lifesaving Appliances." Both are draft Resolutions to be considered for adoption by the IMO Assembly at its 13th session, November 7-18, 1983.

Members of the public may attend up to the seating capacity of the room.

For futher information contact Mr. Robert Markle, U.S. Coast Guard Headquarters (G-MVI-3/24), 2100 Second Street, SW., Washington, D.C. 20593. Telephone: (202) 426-1444.

Dated: September 28, 1983.

Gordon S. Brown,

Chairman, Shipping Coordinating Committee.

[FR Doc. 83-27345 Filed 10-6-83; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Maritime Advisory Committee; Meeting

AGENCY: Maritime Administration (MARAD), DOT.

ACTION: Notice.

SUMMARY: The Maritime Advisory Committee will hold its fourth meeting on October 17, 1983, at 10:00 a.m., in Room 6200, Department of Transportation, 400 7th Street SW., Washington, D.C. The Committee will consider Administration programs and policies on current maritime issues. This meeting will be open to the public on a space available basis.

Dated: October 3, 1983.

By order of the Maritime Administrator.

Georgia P. Stamas,

Secretary.

[FR Doc. 83-27402 Filed 10-6-83; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

On October 1, 1983 the Department of Treasury submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 309, 1625 "I" Street, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0582
Form Number: 1139
Type of Review: Revision
Title: Corporation Application for Tentative Refund

OMB Number: 1545-0028
Form Number: 940 and 940PR
Type of Review: Revision
Title: Employer's Annual Federal Unemployment Tax (FUTA) Return

OMB Number: 1545-0675
Form Number: 1040EZ
Type of Review: Revision
Title: Individual Income Tax Return

OMB Number: 1545-0015
Form Number: 706
Type of Review: Revision
Title: United States Estate Tax Return

OMB Reviewer: Norman Frumkin (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Dated: October 3, 1983.

Rita A. DeNagy,

Departmental Reports Management Office.

[FR Doc. 83-27439 Filed 10-6-83; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amendment of Systems Notice; Revised Routine Use Statement

Notice is hereby given that the VA (Veterans Administration) is considering revising current routine use number 7 for the system of VA records entitled "Compensation, Pension, Education and Rehabilitation Records-VA" (58VA21/22/28) as set forth on page 372 of the **Federal Register** of January 5, 1982.

Under the existing routine use only names and addresses may be released. However, our experience establishes that nonprofit organizations have a legitimate need for additional information. The VA has determined that release of additional information to nonprofit organizations for purposes directly connected with the conduct of programs and the utilization of benefits under Title 38, U.S.C. is a necessary and proper use of information in this system of records and that the routine use should specifically provide for release of this information. Therefore, revision of routine use statement number 7 to provide for release to nonprofit organizations of relevant information in addition to names and addresses is proposed.

Interested persons are invited to submit written comments, suggestion, or objections regarding the revised routine use statement to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All relevant material received before November 7, 1983 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until November 22, 1983.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Veterans Administration, the revised routine use statement included herein is effective November 7, 1983.

Approved: October 3, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

In the system identified as 58VA21/22/28, "Compensation, Pension, Education and Rehabilitation Records-VA," appearing at 47FR372, the following change is made:

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records-VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

7. The name, address, entitlement code (e.g., compensation or pension), period(s) of service, sex, and date(s) of discharge may be disclosed to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under title 38 U.S.C. Disclosures may be in the form of a computerized list.

* * * * *

[FR Doc. 83-27423 Filed 10-6-83; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 196
Friday, October 7, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD

[M-389, Amdt. 2, Oct. 5, 1983]

Short Notice Addition to the October 6, 1983 Meeting

TIME AND DATE: 9:30 a.m., October 6, 1983.

PLACE: Room 1027 (open), room 1012 (closed), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

5b. Dockets 38418, 40201, 38570, 38978, 38720, 39783, 38883, 38184 and 38571, *Employee Protection Program Investigation;* Order Denying petition for reconsideration and motion to disqualify. (OGC)

STATUS: Open.

PERSON TO CONTACT FOR MORE INFORMATION: Phyllis T. Kaylor, the Secretary (202) 673–5068.

[S-1419-83 Filed 10-5-83; 3:35 am]

BILLING CODE 6320-01-M

2

CIVIL AERONAUTICS BOARD

[M-389, Amdt. 1, Oct. 4, 1983]

Short Notice Addition to the October 6, 1983 Meeting

TIME AND DATE: 9:30 a.m., October 6, 1983.

PLACE: Room 1027 (open), room 1012 (closed), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

5a. Docket 40386, Default Protection Plan of the Air Traffic Conference: Request for Instructions. (OGC)

STATUS: Open.

PERSON TO CONTACT FOR MORE INFORMATION: Phyllis T. Kaylor, the Secretary (202) 673–5068.

[S-1420-83 Filed 10-5-83; 3:35 pm]

BILLING CODE 6320-01-M

3

COMMISSION ON CIVIL RIGHTS

October 5, 1983.

PLACE: Room 512, 1121 Vermont Avenue, NW., Washington, D.C.

DATE AND TIME: Tuesday, October 11, 1983, 9:30 a.m., 12 noon; 1:45–4 p.m.

STATUS OF MEETING: Open to public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Preliminary Discussion of *Federal Civil Rights Enforcement Budget: Fiscal Year 1984*
IV. Discussion of Housing Consultation
V. Wisconsin Advisory Committee Report Entitled *Business Incentives and Minority Employment*
VI. State Advisory Committee Recharters:
  A. Maine
  B. South Carolina
VIII. Staff Director's Report:
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports
IX. *Final Report

*This item will be deleted if a reauthorization bill has been enacted prior to October 11, 1983.

PERSON TO CONTACT FOR MORE INFORMATION: Barbara Brooks, Press and Communications Division, 254–6697.

[S-1418-83 Filed 10-5-83; 2:12 pm]

BILLING CODE 6335-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 6:40 p.m. on Friday, September 30, 1983, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Dominion Bank of Denver, Denver, Colorado, which was closed by the Colorado State Bank Commissioner on Friday, September 30, 1983; (2) accept the bid for the transaction submitted by Central Bank at Stapleton, National Association, Denver, Colorado, a newly-chartered national bank; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

The Board of Directors also considered a recommendation regarding the Corporation's assistance agreement involving an insured bank pursuant to section 13(c) of the Federal Deposit Insurance Act (name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), and (c)(9)(A)(ii)).

The meeting was recessed at 6:45 p.m., and at 7:47 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors: (1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in National Bank of Odessa, Odessa, Texas, which was closed by the Acting Comptroller of the Currency on Friday, September 30, 1983; (2) accepted the bid for the transaction submitted by First State Bank of Odessa, National Association, Odessa, Texas, a newly-chartered national bank subsidiary of Independent Bankshares, Inc., Abilene, Texas; and (3) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 3, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1417-83 Filed 10-5-83; 1:58 pm]

BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, October 3, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), the Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendations, pursuant to section 10(b) of the Federal Deposit Insurance Act, that the Corporation make special examination of certain national banks to determine the condition of such banks for insurance purposes: Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(A)(ii)).

Application of MNC Bank, a proposed new bank to be located at 430 Main Street, Rapid City, South Dakota, for Federal deposit insurance.

Recommendation regarding a proposal for financial assistance to facilitate a voluntary merger of savings banks: Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, and liquidating agent of those assets:

Case No. 45,775-L (Amended)—Penn Square Bank, National Association, Oklahoma City, Oklahoma

The Board further determined, by the same majority vote, that no earlier notice of those changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: October 4, 1983.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[S-1416-83 Filed 10-5-83; 1:58 pm]

BILLING CODE 6714-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2 p.m. on Monday, October 3, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of First Alabama Bank of Chilton County, Thorsby, Alabama, for consent to establish a branch at 102 7th Street, Clanton, Alabama.

Application of Minden Exchange Bank & Trust Company, Minden, Nebraska, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in Upland Co-Operative Credit Association, Upland, Nebraska, a noninsured institution, and to establish the sole office of Upland Co-Operative Credit Association as a branch of Minden Exchange Bank & Trust Company.

Application of First City Bank and Trust Company, Hopkinsville, Kentucky, an insured State nonmember bank, for consent to merge, under its charter and title, with United Peoples Bank, Pembroke, Kentucky, and to establish the two offices of United Peoples Bank as branches of the resultant bank.

Application of Security Bank & Trust Company, Midwest City, Oklahoma, for consent to establish a branch-detached facility at 6914 S.E. 15th Street, Midwest City, Oklahoma.

Application of First Trust and Savings Bank of Taylorville, Taylorville, Illinois, for consent to establish a remote service facility at 512 North Webster Street, Taylorville, Illinois.

Application of The Bank of East Alabama, Opelika, Alabama, for consent to establish two remote service facilities at the Student Union Building on the Auburn University Campus and at the Village Mall on Pepperell Parkway, both locations within Auburn, Alabama.

Application of Grand Canyon State Bank, Gilbert, Arizona, for consent to continue paying the interest rate differential on existing passbook and statement savings accounts to be acquired in connection with the purchase of certain assets of and the assumption of the liability to pay deposits made in the Fiesta Mall Branch, Mesa, Arizona, of Southwest Savings and Loan Association, Phoenix, Arizona, and the establishment of that branch as a branch of Grand Canyon State Bank.

Recommendation 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. 45,785-L—Aquia Bank and Trust Company, Stafford, Virginia

Memorandum re: Amendment to the Corporation's General Travel Regulations (GTR)

Report of the Division of Liquidation of Sales of Property Approved Under Delegated Authority by the Costa Mesa, California, Consolidated Liquidation Operation.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

The Board further determined, on motion of Chairman William M. Isaac, seconded by Director C. T. Conover (Comptroller of the Currency), concurred in by Director Irvine H. Sprague (Appointive), that Corporation business required the withdrawal from the agenda for consideration in open session and the addition to the agenda for consideration at the Board's closed meeting held at 2:30 p.m. the same day, of the following matter:

Application of Liberty Bank, Glendale, Arizona, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in three branches of Southwest Savings and Loan Association, Phoenix, Arizona, and to establish the three branches of Southwest Savings and Loan Association as branches of Liberty Bank.

The Board further determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration in open session and the addition to the agenda for consideration at the Board's closed meeting held at 2:30 p.m. the same day, of the following matter:

Application of Commonwealth Bank, Torrance, California, for consent to establish a branch at 12616 Ventura Boulevard, Studio City, California.

In voting to move these matters from open session to closed session, the Board further determined, by the same majority votes, that the public interest

did not require consideration of the matters in a meeting open to public observation; that the matters could be considered in a closed meeting by authority 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)); and that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: October 4, 1983.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[S-1415-83 Filed 10-5-83; 1:58 pm]

BILLING CODE 6714-01-M

7

FEDERAL ELECTION COMMISSION

DATE AND TIME: Wednesday, October 12, 1983, 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, October 13, 1983, 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C. (fifth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility report for candidates to receive Presidential primary matching funds
Draft advisory opinion 1983-27—Captain Eugene B. McDaniel
Draft advisory opinion 1983-28—W. Dean Cannon, Jr., on behalf of the California League of Savings Institutions
Trade association solicitation approval: Explanation and justification, 11 CFR 114.8 (c)(2) and (d)(4)
Routine administrative matters

PERSON TO CONTACT FOR MORE INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[S-1411-83 Filed 10-5-83; 10:14 am]

BILLING CODE 6715-01-M

8

FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to **Federal Register** on October 5, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, October 12, 1983.

CHANGES IN THE MEETING: Deletion of the following open item(s) from the agenda:

Proposed criteria for selecting high dollar group sort institutions. (Proposed earlier for public comment: Docket No. R-0464).

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: October 5, 1983.

James McAfee,

Associate Secretary of the Board.

[S-1421-83 Filed 10-5-83; 4:01 pm]

BILLING CODE 6210-01-M

9

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, October 12, 1983.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposed amendmends to Regulation O (Loans to Executive Officers, Directors and Principal Shareholders) regarding reporting and disclosure requirements.
2. Proposed criteria for selecting high dollar group sort institutions. (Proposed earlier for public comment; Docket No. R-0464)
3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT: PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: October 5, 1983.

James McAfee,

Associate Secretary of Board.

[S-1412-83 Filed 10-5-83; 12:02 pm]

BILLING CODE 6210-01-M

10

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11 a.m., Wednesday, October 12, 1983, following a recess at the conclusion of the open meeting.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Issues relating to Federal Reserve notes.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: October 5, 1983.

James McAfee,

Associate Secretary of the Board

[S-1413-83 Filed 10-5-83; 12:02 pm]

BILLING CODE 6210-01-M

11

INTERNATIONAL TRADE COMMISSION

[USITC SE-83-44]

TIME AND DATE: 10 a.m., Wednesday, October 19, 1983.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:
   a. Sausage casings (Docket No. 970).
5. Investigations 731-TA-113 and -114 (Final) (Carbon Steel Wire Rod from Brazil and Trinidad and Tobago)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

[S-1414-83 Filed 10-5-83; 1:57 pm]

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federal register

Friday
October 7, 1983

Part II

Department of Labor

Occupational Safety and Health Administration

Electrical Standards for Construction; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S106]

Electrical Standards for Construction

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rulemaking.

SUMMARY: Occupational Safety and Health Administration (OSHA) is proposing to amend the electrical safety standards for Construction in Subpart K of 29 CFR Part 1926. The proposed revision is intended to clarify and update those standards. The proposal would accomplish the following three major objectives:

(1) National electrical Code (NEC) requirements which directly affect employee safety in construction workplaces would be placed in the text of the OSHA standard, eliminating the need for the NEC to be incorporated by reference.

(2) Relevant requirements in the existing text of Subpart K, which currently supplement the NEC, would be integrated into the proposed new format.

(3) The requirements would be written in performance language so that superfluous detailed specifications could be omitted and changes in technology could be accommodated, without compromising safety.

DATES: Written comments on these proposed rules must be postmarked by November 21, 1983. Objections and requests for a hearing must be postmarked by November 21, 1983.

ADDRESS: All comments, objections and hearing requests should be sent to Docket Officer; Docket S106 Rm. S–6212; U.S. Department of Labor; 200 Constitution Avenue, NW; Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue, NW., Washington, D.C. 20210. (202–523–8151).

SUPPLEMENTARY INFORMATION:

I. Background

(A) Safety Problems of Electric Shock

It is well known that the human body will conduct electricity. If direct body contact is made with an electrically energized part while a similar contact is made simultaneously with another conductive surface which is maintained at a different electrical potential, a current will flow. This current will enter the body at one contact point, traversing the body and then exiting at the other contact point, usually the ground. Each year many workers suffer pain, injuries and death from such electric shocks. The Bureau of Labor Statistics (BLS) reports 830 work-related deaths by all causes for 1980 (960 fatalities in 1979) in construction work-places with 11 employees or more. In researching causes of these fatalities, BLS has found that about 12 percent were electrocutions. Therefore, for this period, the number of accidental electrocutions from construction firms with more than 10 employees has probably exceeded 100 each year. The overall number of electrocutions in construction is probably higher, since the BLS fatality data presented here do not include deaths in work-places with 10 or fewer employees.

The effects that electric shock will have on an individual will depend upon the type of circuit; its voltage, resistance, and amperage; the pathway through the body; and the duration of the contact. For example, electric shocks produced by alternating currents of powerline frequency (normally 60 Hertz) passing through the body from hand to foot for an average adult worker for one second can cause various effects, starting from a condition of being barely perceptible at 1 milliampere to involuntary muscular control from 9 to 25 milliampers. The passage of still higher currents can produce ventricular fibrillation of the heart (cessation of rhythmic pumping action) from 75 milliampers to 4 amperes and finally immediate cardiac arrest at over 4 amperes. Nearly instantaneous fatalities from electric shock can result from either direct paralysis of the respiratory system (at 20 milliampers or more), failure of the heart to pump due to ventricular fibrillation (at 75 milliamperes or more), or immediate and complete heart stoppage (at 4 amperes or more). Even if the shocking current does not pass through vital organs or nerve centers, severe injuries such as deep internal burns can still occur. In some cases, injuries caused by electric shock can be a contributory cause of delayed fatalities.

Burns suffered in electrical accidents are of great concern. These burns may be of three basic types: electrical burns, arc burns and thermal contact burns. Electrical burns are the result of the electric current flowing in the tissues and may be skin deep or may affect deeper layers (muscles, bones, etc.) or both. Tissue damage is caused by the heat generated from the current flow; if the energy delivered by the electrical shock is high, the body cannot dissipate the heat and the tissue is burned. Typically, such electrical burns are slow to heal. Arc burns, on the other hand, are the result of high temperatures produced by electric arcs or by explosions in close proximity to the body. These burns are similar to burns and blisters produced by any high temperature source. Finally, thermal contact burns are those normally experienced from the skin's contacting hot surfaces of overheated electrical conductors, conduits, or other energized equipment. All types of burns may be produced simultaneously.

Electrical shock currents, event at levels as low as 3 milliamperes, can also cause injuries of an indirect or secondary nature. In this case, the involuntary muscular reaction from the electrical shock can cause bruises, bone fractures and even death resulting from collisions or falls.

(B) Hazards Associated With Electricity

Most electrical systems use the earth to establish an electrical voltage reference system with respect to ground. This is done by connecting a portion of the circuit to ground. Since these systems use conductors which have voltages to ground, a shock hazard exists for persons who are in electrical contact with the earth and are exposed to the conductors. If a person comes in contact with an ungrounded conductor while he is in contact with the ground, he becomes part of the circuit and current passes through his body. Employees on construction sites, because of the environment involved, are likely to be in contact with ground or a grounded conductive surface most of the time. Therefore, the possibility of receiving an electrical shock on a construction site is much greater than for most other workplaces.

In addition to the shock hazard, electricity poses other hazards to employees. For example, when a short circuit occurs or current flow is interrupted, hazards are created from the resultant arcs. If high current is involved, these arcs can cause injury or can start a fire. Fires can also be created by overheating equipment or by conductors carrying too much current. High-energy arcs can damage equipment, causing fragmented metal to fly in all directions. In atmospheres which contain explosive gases or vapors or combustible dusts, even low-energy arcs can cause violent explosions.

(C) Nature Electrical Accidents

Electrical accidents, when initially studied, often appear to be caused by

circumstances which are varied and peculiar to the particular incidents involved. However, futher consideration usually reveals the underlying cause to be a combination of three possible factors: i.e., work involving unsafe equipment and installations, workplaces made unsafe by the environment, and unsafe work performance (unsafe acts). For simplicity, the first and second accident-causing situations are sometimes combined and simply referred to as "unsafe conditions." Thus, electrical accidents can be generally considered as being caused by unsafe conditions, unsafe acts, or in the unual case, combinations of the two.

A few illustrations may help to clarify these contributory factors. For example, some unsafe conditions involving electrical equipment and installations can often be identified by the presence of faulty insulation, improper grounding, loose connections, defective parts, ground faults in equipment for unguarded live parts. The environment, particularly the wet and damp locations of a construction site, can also be a contributory factor to electrical accidents in a number of ways. Other unsafe environments affecting electrical safety would be, for example, atmospheres containing flammable vapors, liquids or gases, and areas containing corrosive atmospheres.

Some unsafe acts can be recognized as, typically, the failure to deenergize electrical equipment when it is being repaired or inspected, the intentional use of obviously defective and unsafe tools, or the use of tools or equipment to close to energized parts. It should also be noted that inadequate maintenance can cause equipment or installations, which were orginially considered safe, to deteriorate, resulting in an unsafe condition.

Compounding these hazards, the temporary nature of construction increases the possibility that a combination of unsafe conditions, unsafe acts, and unsafe environments will result in electrical accidents. For example, the use of tools and cords in poor condition and the use of ungrounded equipment have contributed to construction accidents. Furthermore, the wet and conductive environments common on construction projects increases the likelihood of electric shock when such unsafe conditions are present.

(D) Protective Measures

There are various general ways of protecting employees from the hazards of electric shock, including insulation and guarding of live parts. For example, insulation provides an electrical barrier to the flow of current. To be effective, the insulation must be appropriate for the voltage, and the insulating material must be clean and dry. Another type protection, guarding, prevents the employee from coming too close to energized parts. Guarding can be in the form of a physical barricade, or it can be provided by installing the live parts out of reach from the working surface. (This technique is known as "guarding by location.")

Grounding is yet another method of protecting employees from electric shock; however, it is normally a secondary protective measure. To keep guards or enclosures (the primary protectibn) at a common potential with earth, they are connected, by means of a grounding conductor, to ground. If a live part accidentally comes in contact with a grounded enclosure, current flow is directed back to earth, through circuit protective devices (e.g., fuses and circuit breakers), to interrupt the circuit.

In addition to these protective measures, the use of proper work procedures is necessary for employee protection. When employees are working near or with electrical equipment, they must use safe work practices. Such safety-related employee work practices include keeping a prescribed distance from exposed energized lines, avoiding the use of electrical equipment while wet, and locking-out and tagging equipment which is deenergized for maintance.

Another important safety practice involves electrical protective devices, such as rubber gloves and rubber mats (which are used for insulation against live parts) or liveline tools (which are used for insulation from and actuation of energized parts from a distance). However, to assure the protection of the employee, this equipment must be properly manufactured and maintained. With this equipment, regular maintenance becomes an important consideration in ordrr to keep the equipment from deteriorating and causing an unsafe condition.

(E) Present Regulations and Reasons for Proposed Revision

As noted earlier, electricity has long been recognized as a serious workplace hazard, exposing employees to such dangers as electric shock, electrocution, fires, and explosions. Indeed, the long history of the National Electrical Code attests to this fact. Since the turn of the century, the NCE has represented the continuing efforts of experts in electrical safety to deal with these recognized hazards and to provide for safety in all electrical installations, including construction workplaces.

The regulations presently contained in Subpart K of 29 CFR Part 1926 incorporate the entire 1971 NEC by reference. They also include some additional requirements (for example, those on battery rooms and battery charging, § 1926.403) that are not contained in the NEC. The NEC is the most widely used code for safeguarding people and property from the potential hazards associated with electricity. The first edition of the NEC was published in 1897, when the use of electricity was just starting, and the Code has been revised and updated periodically since then. Today, in addition to its role in the OSHA standards, the NEC provides the basis for electrical safety regulations in over 2000 municipalities throughout all 50 States. Thirty-seven States and the District of Columbia have adopted it as their electrical safety law, and it is enforced by over 12,000 governmental electrical inspectors.

OSHA recognizes the important role that the NEC has played over the years in defining basic requirements for safety in electrical installations. The revision of Subpart K being proposed by this document will maintain the protection presently afforded to employees by the 1971 NEC, as incorporated by reference in the present standards. While carrying forward NEC provisions which are considered necessary for employee safety, OSHA is proposing to provide greater flexibility for compliance with these provisions to the extent that employee safety warrants. OSHA has determined, therefore, that the requirements contained in this proposed revision of Subpart K are reasonably necessary to protect employees from electrical hazards posing significant risks in the workplace.

Since the 1971 NEC was adopted as a national consensus standard, the National Fire Protection Association (NFPA) has revised the NEC three times, the most recent being the 1981 edition. Because of the continual process by the NFPA of updating the Code, any specific edition which OSHA might adopt would likely be outdated within a few years. In addition, since the rulemaking process can become somewhat lengthy, a complete revision of the OSHA electrical safety standards every three years to keep pace with the NEC changes is not practical. To remedy this problem, OSHA is proposing revisions to Subpart K to make the standards flexible enough to accommodate changes in technology, obviating the need for constant revision. Additionally, where possible, the proposal is written in performance terms in order to allow alternative installation methods if they

provide comparable safety to the employee.

Another difficulty with the current incorporation of the entire NEC by reference is that the NEC contains many details which are not directly related to employee safety. In proposing this revision to Subpart K, OSHA has tried to carry forward only NEC provisions which are relevant to employee safety in construction workplaces. In addition, OSHA has attempted to simplify those provisions to make the revised standards easier for employers and employees to use and understand. Furthermore, since the revised standard would place all relevant requirements in the text of the regulations, employers would no longer have to refer to the NEC to determine their obligations under OSHA.

In striving for this degree of standards simplification, OSHA recognizes that at times a newly revised NEC might contain technical advances significantly improving employee safety. Should this occur, the new NEC revisions would merit employer attention early rather than later when the derived OSHA standard is updated. Present OSHA policy is that employers who, in such situations, elect to follow the latest NEC revisions in the interim prior to future OSHA updating will generate a de minimis condition. However, due to the performance oriented nature of the OSHA standard as compared to the NEC, situations involving deviations of the NEC from the OSHA standards in areas affecting employee safety are expected to be infrequent.

The rationale applicable to this situation is OSHA Instruction CPL 2.11A. As this instruction explains, a de minimis condition exists where an employer's workplace has been updated in accordance with new technology or equipment as a result of revisions to the latest consensus publications from which current OSHA standards were derived (such as the NEC), where the updated versions result in a "state of the art" workplace, technically advanced beyond the requirements of the applicable OSHA standard, and where equal or greater safety and health protection is provided.

II. Development of Proposed Standard

(A) General Approach

In view of the limitation imposed by the continued incorporation by reference of the 1971 NEC, as previously discussed, OSHA determined that relevant requirements for electrical safety for construction should be placed within the body of Subpart K and that these provisions should be updated and clarified to facilitate their application to construction workplaces. OSHA has used selected provisions of Part I of NFPA 70E, "Electrical Safety Requirements for Employee Workplaces," as a base document for developing its proposed revision for construction.

(B) Background

In 1976, NFPA created the "70E Committee" to prepare a consensus standard for possible use by OSHA in developing a proposed revision of the Agency's electrical safety standards. The 70E Committee visualized a standard consisting of four major parts:

Part I—Installation Safety Requirements,

Part II—Safety Related Work Practices,

Part III—Safety Related Maintenance Requirements,

Part IV—Safety Requirements for Special Equipment.

The NFPA 70E Committee completed its work on Part I and NFPA approved it as a national consensus standard in 1979. Part I was derived from the 1978 NEC; however, unlike the NEC, this Part was not intended to be applied as a standard for the design, installation, modification, or construction of an electrical installatin or system. Rather, the purpose of Part I was to provide a compilation of provisions from the NEC which were considered relevant to employee safety from electrical hazards of electric utilization systems in the workplace. Efforts were made to revise and clarify language from the NEC in order to make the requirements more readily understood and implemented by employers.

In the process of developing this proposal, OSHA reviewed NFPA 70E to examine its suitability as a standard for electrical safety for construction workplaces. Various provisions in NFPA 70E (i.e., sections 2.B(1), 3.A(2)(a), and 3.A(2)(c)(vii)) specifically mention construction. Order sections, such as Section 6.A(4) *Tunnel Installations*, imply a construction-like activity by referring to the use of mobile shovels, draglines, under ground excavators, and the like. This demonstrates that electrical safety in construction was a consideration in the development of the consensus standard. In reviewing relevant construction accident descriptions, OSHA also determined that many of the requirements in NFPA 70E are related to the causes of these accidents, as well as to typical hazards present in the construction industry. For example, NFPA 70E provisions on temporary wiring and on grounding address hazards contributing to many of the electrocutions and electric shock injuries in construction.

However, OSHA found that significant portions of NFPA 70E did not relate to electrical installations usually found in construction. For example, requirements on electric signs and outline lighting, electrolytic cells, swimming pools, open wiring on insulators and fire protective signaling systems are not necessary for inclusion in a construction safety standard. Therefore, OSHA did not include provisions from NFPA 70E relating to installations of electric equipment not found in construction.

(C) New Format for Subpart K

The major change proposed in the new format of Subpart K is the inclusion of the relevant NEC provisions within the body of the standard itself, making it unnecessary to continue to incorporate the entire NEC by reference. An advantage of using this format is indicated by the reduction from the approximately 250,000 words in the National Electrical Code to the approximately 15,000 words in the proposed revisions.

The proposed format would divide Subpart K into four groups of standards. In addition, a general definitions section covering the entire Subpart would also be provided. OSHA believes that the use of this systematic format can provide for the continued effective coverage of hazards and equipment currently addressed, with enough flexibility to accommodate other equipment and protective methods in the future. The proposed Subpart K is divided into four major groups as follows:

Installation Safety Requirements: §§ 1926.402–1926.415

Safety-Related Work Practices: §§ 1926.416–1926.430

Safety-Related Maintenance and Environmental Considerations: §§ 1926.431–1926.440

Safety Requirements for Special Equipment: §§ 1926.441–1926.448

Since each division represents a wide range of diverse equipment, installations and practices, it is intended that each division be further subdivided as appropriate. In addition, a general definitions section for all of Subpart K is being proposed as §§ 1926.449.

Various provisions located elsewhere in Part 1926 currently reference either the 1971 NEC or specific paragraphs in Subpart K. The proposal would revise these references to reflect the appropriate proposed provisions of Subpart K.

(D) Advisory Committee on Construction Safety and Health

As required by Section 107 of the Construction Safety Act (83 Stat. 96, 40 U.S.C. 333), a draft of the proposed revision to Subpart K was submitted to the Advisory Committee on Construction Safety and Health (ACCSH) on January 26, 1982, and was discussed at their meeting of March 3, 1982. The committee's recommendation is contained in the transcript of this meeting.

During the meeting, committee members and public participants made suggestions concerning the draft proposal. OSHA has thoroughly reviewed and analyzed the ACCSH recommendations, many of which have been incorported in this proposal. Careful consideration was given to all of the suggestions. The major issues raised by the committee are discussed later in this preamble.

III. Summary and Explanation of Proposed Standard

Subpart K of the Construction Industry Standards applies to electrical installations used on the jobsite, both temporary and permanent. As previously mentioned, the existing Subpart K incorporates by reference the entire 1971 National Electrical Code. Additionally, the existing standards sets forthother requirements addressing unique hazards present in the construction industry. Some of these additional requirements are equivalent to or duplicate requirements in the 1971 NEC.

For example, existing § 1926.402(a)(2) prohibits the interchangeability of receptacles used on circuits of different voltages, frequencies, or types of current. A paragraph in Section 210–21 of the 1971 NEC contains the same prohibition. Other regulations have been derived from different sources and supplement the requirements of the NEC. An example of this type is existing § 1926.402(a)(10), which prohibits the use of worn or frayed cables. While no such requirement is explicitly stated in the 1971 NEC, this prohibition is implied throughout various sections of the code; e.g., Sections 100–17, 230–46, 305–2, and 410–23.

The proposed revision of Subpart K would accomplish the following three major objectives:

(1) NEC requirements which directly affect employee safety in construction workplaces would be placed in the text of the OSHA standard, eliminating the need for the NEC to be incorporated by reference.

(2) Relevant requirements in the existing text of Subpart K, which currently supplement the NEC, would be integrated into the proposed new format.

(3) The requirements would be written in performance language so that unnecessary detailed specifications could be omitted and changes in technology could be accommodated, without compromising safety.

As a result, the proposed standard should be easier to use and understand and should not become technologically obsolete in the near future. Since it will be written in performance-oriented terms, Subpart K should remain a viable electrical safety standard, even though the detailed specifications of the NEC change as the Code is revised every three years. Therefore, when the NEC is periodically revised by NFPA, Subpart K should not be so out-of-date as to necessitate revision

The proposal contains several new provisions, which are not found in the 1971 NEC or elsewhere in the current Subpart K. These few additional requirements reflect safety requirements appearing in the most recent revision (1981) of the NEC, which also contains all the requirements found in the 1971 NEC. OSHA has determined that most construction employers are generally complying with the latest edition of the NEC and that these few new rules are already being met. Therefore, as set forth in OSHA's regulatory analysis of the proposed rule, the proposal should create no new burdens on employers, nor should it sacrifice employee safety.

Some parts of the present §§ 1926.400 through 1926.405 are proposed either for deletion or for modification and incorporation into new sections. Other parts of these sections would be incorporated into new sections without substantive change. As an aid for following the proposed changes, OSHA has developed the following distribution table:

DISTRIBUTION TABLE

Old section	Proposed new section
1926.400(a)	Removed. The old paragraph adopted the 1971 NEC by reference. The proposal places the relevant NEC requirements into the text of the regulation.
1926.400(b)	1926.402.
1926.400(c)	1926.416(a).
1926.400(d)	1926.416(b)(1).
1926.400(e)	1926.403(i)(1) [low voltage]; and 1926.403(j)(3) [high voltage]—requirements conform to the 1981 NEC.[1] Minimum clear working space has been increased from 2½ feet to 3 feet.
1926.400(f)	1926.416(c); reference to NEC has been removed.
1926.400(g)	1926.417.
1926.400(h)	Redesignated 1926.404(b)(1) [Reserved].
1926.401(a)	1926.404(f)(7)(iv); requirement has been reworded to conform to the 1981 NEC.[1] Requirement now lists specific conditions requiring the grounding of portable equipment.
1926.401(b)	1916.404(f)(7) (iii) and (v); requirement has been reworded to conform to the 1981 NEC.[1] Requirements now list specific conditions requiring the grounding of fixed equipment.
1926.401(c)	1926.404(f)(6); requirements relating to impedance and ampacity of grounding conductor have been removed to be consistent with 29 CFR Part 1910, Subpart S. Briefly, these requirements have removed because the parameters cannot be accurately measured in operational workplaces. Further discussion of OSHA's rationale for proposing to remove these requirements can be found in the preamble to the Subpart S final rule document (46 FR 4044 Column 3, Issue No. 5).
1926.401(d)	Ground resistance of driven rod electrodes is covered by 1926.404(f)(10).
1926.401(e)	Removed. Requirement is ambiguous in that it implies that the resistance between the ground and the grounded power conductor is a controlling factor in circuit overcurrent protection. Clarifying the ambiguity would result in a requirement for measuring the actual equipment grounding conductor impedance under fault conditions. The practicality of such measurements have been questioned and currently no such requirement exists in the National Electrical Code.
1926.401(f)	1926.405(a)(2)(ii)(*J*).
1926.401(g)(1)	Conductor ampacity is covered by 1926.404(f)(8)(ii) for grounding and by 1926.404(f)(9) for bonding.
1926.401(g)(2)	Bonding as it relates to static electricity control for material handling is covered in Subpart F (Fire Protection and Prevention) of Part 1926 instead of Subpart K. Bonding for this purpose is found in 1926.151(a)(5) and 1926.152(e)(2).
1926.401(h)	Temporary wiring is covered in 1926.405(a)(2). Reference to the NEC has been removed.
1926.401(i)	Covered by 1926.403(i)(2) and 1926.405(a)(2)(ii)(*b*)
1926.401(j)(1)	1926.405(a)(2)(ii)(*e*).
1926.401(j)(2)	First sentence removed. Hard usage cords are required by 1926.405(a)(2)(ii)(*j*). Second sentence is 1926.405(a)(2)(ii)(*f*). Third sentance is covered by 1926.403(e) for conductors and 1926.405(g)(2)(ii) for hard service flexible cords.
1926.401(j)(3)	1926.416(b)(2).
1926.401(j)(4)	1926.405(a)(2)(ii)(*g*); amended to allow greater flexibility.
1926.402(a)(1)	Covered by 1926.403(a), 1926.403(i)(2), 1926.404(f) and 1926.405(a)(2)(ii)(*d*).
1926.402(a)(2)	1926.405(j)(2)(i).
1926.402(a)(3)	Covered by 1926.403 (a), (b) and (c).
1926.402(a)(4)	Covered by 1926.403(b) and 1926.405(g)(2)(iii).
1926.402(a)(5)	1926.405(g)(2)(ii); amended to conform to 1981 NEC.[1] Splices are now permitted for hard service cords No. 12 and larger only.
1926.402(a)(6)	1926.405(a)(2)(ii)(*i*) and 1926.408(a)(4)(ii).
1926.402(a)(7)	Covered by 1926.403(e) and 1926.405(g)(2)(ii).
1926.402(a)(8)	Covered by 1926.405(a)(2)(ii) (*b*) and (*i*).
1926.402(a)(9)	1926.405(j)(1)(ii); amended to conform to 1981 NEC.[1] Editorial changes only.
1926.402(a)(10)	1926.416(e)(1).
1926.402(a)(11)	1926.405(a)(2)(ii)(*i*); amended to conform to the 1981 NEC.[1] Editorial changes only.
1926.402(a)(12)	1926.416(e)(2).
1926.402(b)(1)	1926.404(e)(1)(i), amended to simplify requirement.
1926.402(b)(2)	1926.404(e)(1)(ii); amended to conform to 1981 NEC.[1] Editorial changes only.
1926.402(b)(3)	1926.416(d).
1926.402(c)(1)	1926.403(h); reworded for clarification.
1926.402(c)(2)	Covered by 1926.403(f) and 1926.404(e)(1)(v).
1926.402(c)(3)	Covered by 1926.43(d)(1) and 1926.405(b)(2).

DISTRIBUTION TABLE—Continued

Old section	Proposed new section
1926.402(c)(4)	1926.405(e); amended to conform to 1981 NEC.[1] Editorial changes only.
1926.402(d)	Covered by 1926.403 (i)(2) and (j)(2) and 1926.405(j)(5).
1926.402(e)	Covered by subparts F and J of Part 1926.
1926.403	1926.441, with minor editorial changes.
1926.404(a)	Placed in 1926.449 and amended to conform to 29 CFR part 1910, Subpart S.
1926.404(b)	1926.407(b); amended to conform to 29 CFDR Part 1910, Subpart S.
1926.404(c)	Covered by 1926.407 (b)(2) and (d).
1926.404(d)	1926.432.
1926.405	1926.449; amended to include more definitions and to conform to 1981 NEC.[1] Editorial changes only.

[1] NOTE.—OSHA is proposing to use the 1981 NEC version of these rules. See text for additional explanation.

As can be seen from the Distribution Table, some of the proposed revisions are 1981 NEC versions of existing requirements set forth in Subpart K. For example, proposed § 1926.404(f)(7)(iv), which addresses grounding of cord-and plug-connected equipment, is derived from 1981 NEC Section 250–45. This proposed regulation would replace existing § 1926.401(a), which requires portable and plug-connected equipment other than double insulated equipment to be grounded. In contrast, the proposal lists specific conditions which warrant the grounding of equipment connected by cord and plug. If the listed conditions are not present, grounding is not necessary for employee safety.

In developing proposed revisions to the present requirements in Subpart K, OSHA relied on corresponding requirements contained in the 1981 NEC. The reasons for this are threefold. First, the NEC is widely recognized and understood in the construction industry. The use of language consistent with (and in many cases identical to) that used in the 1981 NEC will promote greater understanding of OSHA's standard within the industry. Second, as clearly demonstrated in the Regulatory Analysis, the vast majority of contractors are already complying with the provisions of the 1981 NEC. This ensures wide acceptance of and compliance with OSHA's proposed standard. Third, OSHA's proposal is consistent with the regulations of many state and local authorities, which base their rules on the latest edition of the NEC. This reduces the possibility that employers will be required to follow conflicting or inconsistent standards.

Parts of the proposed standard not listed in the distribution table have been derived from requirements in the 1981 National Electrical Code and NFPA 70E. The following sections discuss the proposal's principal substantive additions to and deletions from the existing standard.

(1) *Principal additions.* (i) Paragraph (f)(3) of § 1926.404 proposes new regulations pertaining to the grounding of portable and vehicle-mounted generators. To prevent hazardous voltages from being impressed on the system and to ensure the proper operation of overcurrent protective devices, the existing standard, 1971 NEC Section 445–8, requires grounding the frames of generators operating at over 150 volts to ground. Lower voltage generators must have their frames grounded or permanently and effectively insulated from ground. Recognizing the uncertain availability of a dependable ground for portable and vehicle-mounted generators, the proposal does not require the frames of such generators to be grounded, if certain conditions are met. These conditions, proposed in § 1926.404(f)(3), have been taken from the 1981 NEC. By permitting the frame of the generator to serve as the grounding electrode for the system supplied by the generator, the proposal allows another method of ensuring the proper operation of protective devices.

(ii) The current provisions on temporary wiring, § 1926.400(a) and 1926.401(h), incorporate Article 305 of the 1971 NEC by reference. Proposed § 1926.405(a)(2) carries forward the substance of these requirements, updated to the 1981 NEC, and supplements them with several new provisions. The first of these, paragraph (a)(2)(ii)(*c*) of § 1926.405, proposes that receptacles not be installed on temporary lighting circuits. Derived from 1981 NEC Section 305–2(d), this requirement is necessary to prevent construction areas from exeriencing a loss of temporary lighting, which could occur if cord- and plug-connected equipment at the receptacle were to trip a circuit breaker or ground-fault circuit interrupter protecting the lighting circuit. Paragraph (a)(2)(ii)(*h*) is also new and has been taken from 1981 NEC Section 305–2(g). However, it does not add a requirement; it merely explains the extent to which provisions of the existing standard which address the need for junction boxes (1971 NEC Sections 300–15 and 300–16) apply to temporary wiring (1971 NEC Section 305–1). The proposal clarifies that junction boxes are required where a change is made from one wiring method to another and one of the wiring methods is a raceway system or a metalclad or metal-sheathed cable system.

(iii) Proposed paragraph (a)(2)(ii)(g) of § 1926.405 is taken from current § 1926.401(j)(4), which requires portable electric lighting used in moist and/or other similarly hazardous locations to be operated at a maximum of 12 volts. OSHA is proposing to amend this provision to allow the use of 120-volt lights if they are protected by ground-fault circuit interrupters. OSHA believes that either method can protect employees from the hazard of accidental electrocution due to lamp breakage in highly conductive locations. The other requirements in proposed § 1926.405(a)(2) have been taken from the existing standards with some editorial clarification, as noted in the distribution table.

(iv) A defintition of "intrinsically safe equipment and associated wiring" is being included to clarify the requirements, in proposed § 1926.407 (existing requirement: 1971 NEC Article 500), pertaining to such equipment. The definition has been derived from the National Fire Protection Association Standard for Intrinsically Safe Apparatus and Associated Appraratus for Use in Class I, II, and III, Division 1 Hazardous Locations, NFPA 493–1978. Although Section 500–1 of the 1971 NEC describes intrinsically safe equipment, it does not contain a definition of the term. The definition being proposed by OSHA is consistent with the descriptive language set out in the 1971 NEC.

(2) *Principal deletions.* (i) In the 1971 NEC, incorporated by the existing Subpart K, chapters 3 and 4 deal with wiring methods and materials (Chapter 3) and equipment for general use (Chapter 4) and include extensive design type data. In the proposal, however, the tables containing various specialized technical information, such as are contained in those chapters, have been deleted. Typical topics of these deleted parts include insulation characteristics, allowable ampacities, electrical box sizes, flexible cord and motor full load currents. This type of information has been removed from the proposed sections because it deals with items not directly related to electrical hazards. For example, requirements on the composition of insulation on a conductor have been deleted; however, the actual requirement that the conductor be insulated and that the insulation be approved for its intended purpose has been retained. These changes result in a standard which is more performance oriented.

(ii) Chapter 6 of the 1971 NEC describes special equipment requirements. Requirements from this chapter dealing with electrically operated organs and the installation of equipment and wiring used for sound recording and reproduction have been deleted in the proposal because

electrical safety for employees in construction is not directly affected by these items. This type of equipment is not normally found in construction.

(iii) Chapter 7 of the 1971 NEC deals with special conditions. Requirements from this chapter involving stand-by power generation systems and emergency systems have been deleted. In these situations, primary electrical hazards to the worker are minimal since the effects of power outage are generally limited to work stoppage. Additionally, such systems are not commonly used for construction purposes.

(iv) Chapter 9 of the 1971 NEC provided a collection of tables containing technical data, together with a number of sample computations. This entire chapter in not included in the proposal because it is solely an instructive guide for the design of certain electrical systems and is not a necessary subject for OSHA electrical safety regulations.

(3) *Definitions.* The definitions in the current § 1926.405 have been carried forward in § 1926.449 of the proposal. Some have been editorially modified to conform to their counterparts in the 1981 NEC and Subpart S of Part 1910. However, since the terms "hazard" and "shock hazard" are not used in the proposal or in the existing standard, OSHA is proposing the removal of the definitions for these terms. To supplement the existing § 1926.405, OSHA is proposing to define additional terms used in the proposed standard. These additions have been taken from the 1981 NEC.

Among the additional definitions are those for "acceptable", "accepted", "certified", and other terms related to the suitability of equipment or materials for a specific purpose, environment or application as determined by a qualified testing laboratory. The existing standard, in § 1926.405(a), simply references the general industry electrical standard, while the proposal places the relevant portions of the definitions, as amended by the 1981 NEC, in the text of Subpart K. The existing definitions relating to approval refer to a nationally recognized testing laboratory, such as, but not limited to, Underwriters Laboratories, Inc., and Factory Mutual Engineering Corp. However, in accordance with the 1981 NEC, all references to "a nationally recognized testing laboratory" have been changed to "qualified test laboratory." Additonallly, the proposal defines "qualified testing laboratory" in terms agreeing with the description of such laboratories in Section 90-6 of the 1981 NEC. The proposed definitions do not include references to the two specific laboratories mentioned in the existing definitions. Since the terms related to approval have been applied to existing Subpart K in the same manner as they would be in the proposed revision, the inclusion of the definitions should not result in any substantive change in the standard.

In a related matter, OSHA has issued an advance notice of proposed rulemaking (48 FR 270) on the accreditation of testing laboratories. In proposing the use of the aforementioned definitions and their references to a "qualified testing laboratory," OSHA recognizes that the outcome of the laboratory accreditation rulemaking may affect the use of these terms and their defintions in the future. When that rulemaking has been completed, appropriate changes will be made to the regulation in Subpart K, as well as other OSHA regulations dealing with product approval and testing laboratories.

(4) *Miscellaneous changes to other Subparts.* In addition to proposing the complete revision of Subpart K, OSHA is proposing several miscellaneous changes to other subparts of Part 1926. All but one of these proposed revisions would eliminate references to the NEC or existing provisions of Subpart K and replace them with references to the corresponding provisions of proposed Subpart K. The other proposed change would correct a reference in existing § 1926.600(a)(6). This provision now references § 1518.550(a)(15), which was the predecessor of the correct reference, § 1926.550(a)(15).

(5) *Major issues.* Following is a discussion of the major issues raised by the Advisory Committee on Construction Safety and Health (ACCSH) in their deliberations on OSHA's draft proposed revision of Subpart K.

(a) *"Shall not" vs. "may not."* A primary area of concern raised by ACCSH involved the choice of regulatory language. The committee as a whole disagreed with the use of the words "may not" for regulations in which a right, privilege, or power is abridged. The committee felt that the words "shall not" are more appropriate for such negative requirements. For example, § 1926.405(a)(2)(ii)(*f*) of the draft proposal read:

> Temporary lights may not be suspended by their electric cords unless cords and lights are designed for this means of suspension.

The committee recommended changing the "may not" to the less grammatically acceptable "shall not," because they felt the draft language sounded permissive and might be misinterpreted in the field.

Formerly, the **Federal Register** guidelines required agencies to use the words "may not" with negative regulations. Presently, the use of either "may not" or "shall not" is permitted, provided the term selected is used consistently.

After considering the ACCSH recommendation and reviewing other regulatory language in the Construction Standards, OSHA has decided to use the term "shall not." Since this practice is consistent with the wording of current Construction Industry Standards, it will eliminate any misunderstanding as to whether or not the rules in question are mandatory.

(b) *Heavy duty cords for temporary lighting.* In the existing standard, § 1926.401(j)(2) contains the requirement:

> "Temporary lights shall be equipped with heavy duty electric cords with connections and insulation maintained in safe condition."

In § 1926.405(a)(2)(ii)(*b*), the proposed standard also allows methods of wiring temporary lights other than cords, including open conductors, cables suitable for the environment, and conduit. In this area, the proposal is consistent with the 1971 and 1981 NEC, which allow but do not require temporary lights to be wired with cord. When properly installed, any of these wiring methods can provide safety as effectively as heavy duty electric cord can. Since proposed § 1926.405(a)(2)(ii)(*b*) would adequately protect employees from the hazards of temporary lighting wiring methods, the language of existing § 1926.401(j)(2) has not been included in the proposal.

Several ACCSH members objected to the removal of this requirement from the proposal. The representative of the International Brotherhood of Electrical Workers felt that OSHA's proposal did not provide the minimum protection of the existing standard. However, no one presented data or information demonstrating that other temporary lighting wiring methods have caused injury or exposed employees to unnecessary hazards.

Since we are aware of no information indicating that other wiring methods are unsafe and since these other methods are considered to be safe by the NEC, OSHA is proposing the removal of the requirement for heavy duty cord for temporary lighting. This would allow the use of other recognized safe wiring methods and will allow employers more flexibility in complying with the provisions on temporary lighting than the existing standard. OSHA would appreciate receiving any data on the

safety of the wiring methods permitted by the proposal, as well as any information as to whether the present "heavy duty cord" requirement should be retained and, if so, why.

(c) *Use of water pipe to ground equipment.* For branch circuit extensions, the existing standard, as stated in 1971 NEC Section 250–50, Exception, allows the grounding conductor of a grounding-type receptacle to be grounded to a nearby cold water pipe if the original branch circuit does not have an equipment grounding conductor. The draft proposal reviewed by ACCSH continued to allow this practice and was intended to be consistent with the NEC.

Some of the ACCSH members raised concerns regarding the use of a water pipe as a ground, pointing out the hazards involved. In particular, the committee cited the widespread use of plastic pipe as evidence that many piping systems would not provide a continuous electrical conductor.[1] Additionally, it was noted that the use of a water pipe as a grounding conductor can introduce hazards to plumbers working on the piping. If the pipe is carrying leakage current, it poses a shock hazard to anyone interrupting its continuity.

OSHA agrees that the expanded use of plastic water pipe can cause problems with the reliability of a water pipe as a ground and recognizes the increased shock hazard to those working on the pipes. Furthermore, the types of old, ungrounded branch circuits addressed by this provision of the NEC are not generally encountered in construction. For these reasons, OSHA's proposal would not allow the grounding of receptacles by means of grounded water pipes. The proposal would require them to be grounded by means of an equipment grounding conductor which runs with or encloses the circuit conductors (proposed § 1926.404(f)(8)). Since the proposal differs from the NEC on this point, OSHA solicits comments regarding any problems which may result from this conflict of standards.

(d) *Ground-fault protection.* The provisions contained in existing § 1926.400(h) on ground-fault protection will be redesignated to § 1926.404(b)(1). These requirements are not being proposed for revision and are not subject to public comment in this rulemaking action. The ground-fault protection regulations were promulgated under Section 6(b) of the OSH Act and Section 107 of the Construction Safety Act (41 FR 55696; December 21, 1976) and were based on a full public rulemaking record.

IV. Regulatory Assessment

(A) Preliminary Regulatory Impact Analysis

The following Regulatory Impact and Regulatory Flexibility analyses of this proposed revision of Subpart K have been prepared in accordance with the requirements of Executive Order 12291, and the Regulatory Flexibility Act of 1980 (P.L. 96–353, 94 Stat. 1164, [5 U.S.C. 601] et. seq.). The incremental cost of this proposed revision would be less than $100 million; therefore, the proposal does not constitute a major rule under E.O. 12291.

(1) *Overview of the OSHA Proposal.* The proposed standard would cover all workers involved in construction activities. In 1977, the estimated number of firms in the construction industry was 1,190,789; however, only 40 percent of these firms reported having paid employees. The number of workers employed in construction in 1981 was estimated to be 4,176,000 (dropping to 3,913,000 in 1982). Construction establishments covered by the proposed standard are included in the Standard Industrial Classification (SIC) Codes 1500, 1600 and 1700, such as General Contractors (1521), Heavy Construction, Not Elsewhere Classified (1629), and Electrical Work (1731).

Worker's Compensation claims indicate that workers in all types of construction jobs are exposed to electrical hazards. Although in 1979, electrical work was associated with the highest single percentage of total claims (30.7), other categories such as heavy construction and plumbing, and heating and air conditioning work were also associated with a high percentage of total claims (16.8 and 10, respectively). The remainder of claims were distributed among other categories of construction work, such as roofing and sheet metal work (3.7 percent) and nonresidential building construction (6.9 percent).

(2) *Overiew of the Effectiveness of Alternative Standards.* Site visits indicated that construction projects of all sizes have some degree of noncompliance with the existing Subpart K (OSHA's Preliminary Regulatory Impact Analysis, Docket S106). OSHA estimates that the total electrical injuries in construction projects were 1,857 in 1981 and 1,738 in 1982, including 241 and 226 fatalities in each respective year. Risk and injuries averted by means of full and perfect compliance with either the proposed or current standard would be the same, i.e., 1077 injuries and 140 fatalities in 1982 alone. The projected injuries that would be avoided through 1986 are presented in Table I–2. (Present practices, however, as further discussed below, are frequently out of compliance with the current standard, and OSHA expects increased compliance levels with the proposal owing to its greater clarity and simplicity.)

Given the estimated reduction in risk, some of the benefits were monetized by assessing the injury costs avoided, using two approaches: (1) determination of the economic impacts of foregone earnings, and medical and other costs of the "human capital" approach, and (2) an estimate of the amount society might be willing to pay to realize some reduction in the possibility of premature death or injury or the "willingness-to-pay" approach. While OSHA endorses no particular value of human life and limb or methodology for monetizing benefits, the two approaches were examined solely in order to provide a broader view of the potential benefits that would accrue if the proposed standard is promulgated.

SUMMARY TABLE OF PROJECTED COMPARISONS OF SUBPART K

Compliance status	Years	Costs (1982, in thousands of dollars)[1]	Savings (1982; in thousands of dollars)[2]	Injuries avoided[3]	
				Fatal	Nonfatal
Current practices vs. full compliance with the proposed subpart	1982	113,184	(5,661)	140	937
	1983	111,005	(14,971)	148	987
	1984	117,673	(15,862)	155	1,037
	1985	124,741	(16,806)	162	1,086
	1986	132,233	(17,807)	170	1,136

Source: JACA Corp., *Final Report*, January 1983, pp. 3 through 5.

[1] 1982 present values discounted at 10 percent.

[2] Cost of achieving full compliance with the existing Subpart minus the cost of achieving full compliance with the proposed Subpart.

[3] Injuries are not discounted.

Using the human capital approach, the annual cost of injuries were obtained by multiplying the average cost of $57,197 per injury (based on the Consumer

[1] Pp. 196–203, Transcript of March 3, 1982, meeting of the Advisory Committee on Construction Safety and Health.

Product Safety Commission's Injury Cost Model with adjustments by JACA Corp.) by the projected number of annual injuries (fatal and nonfatal) avoided by compliance with the Subpart. The average cost per injury included an estimated of lost wages, medical costs, such as hospitalization, and other costs, such as accident investigation, transportation and pain and suffering of the victim. A 5.3 percent linear rate of growth of employment was projected over 5 years using Bureau of Labor Statistics unpublished data. Five years was chosen to give some feeling for long range impact. The recent fluctuations in demand for construction and in finance and materials costs precludes projecting results with any confidence beyond 5 years. Results for the 2nd through 5th years were discounted to 1982 using the Office of Management and Budget mandated rate of 10 percent. These values were then combined with the value for the first year to obtain the value of the avoided injury costs or the 5-year benefits. This approach yields a 5-year economic or GNP benefit of $285.2 million for going from current practices to full compliance with both the existing Subpart and the proposal. It must be emphasized that the benefits estimated through this approach constitute only some of the strictly economic portions of the total possible benefits.

The willingness-to-pay approach employed estimates of what society or some workers have been willing to pay for similar discrete reductions in the risk of premature loss of life ($830,680) or for a lost workday injury ($32,323). (The former is from the Injury Cost Model, adjusted for inflaction, and the latter is from the OSHA *Draft Regulatory Impact Analysis of the Hazard Communication Proposal*). These estimates were multiplied by the respective number of fatal and nonfatal injuries avoided by compliance with the proposed Subpart projected for each year. As in the case above, the calculated benefits for the 2nd through 5th years were discounted to 1982 using a rate of 10 percent. These values were then combined with the first-year benefits to obtain the 5-year benefits. This approach yields $670.5 million over a 5-year period for going from current practices to full compliance with the proposed Subpart.

The benefits must also be assessed in terms of improvements in the quality of the proposed Subpart that do not lend themselves to quantification. Assuming that the proposed Subpart would be read by a representative of each construction firm, it follows that some definite improvement in compliance is likely to be experienced along with a resultant decrease in the rate of injuries. One way to account for this improvement is to postulate a percentage increase in compliance and to apply this percentage to the total benefit of the proposed Subpart. If an improvement of 10 percent were assumed and applied against the estimated first-year benefits of $61.6 million and $146.6 million (the estimates using the human capital and willingness-to-pay approaches, respectively), the value of the incremental benefit for this year would range from $6.2 million to $14.7 million. Over the first 5 years, the incremental value would range from $28.7 million to $67.1 million.

(3) *Technological and Economic Feasibility.* A comparision of the existing and proposed versions of the OSHA electrical construction standards reveals that, for the most part, the changes introduced by the proposed revisions do not pose any technological changes which would require major cost outlays for construction firms. The revisions having cost implications relative to the existing standard are presented in the Table of Provisions of the Proposed Subpart Having Important Cost Implications. Several of the changes could reduce compliance costs for firms, because the proposed standard recognizes lower-cost alternatives for compliance. Thus, no technological or economic constraints are envisioned.

(4) *Overview of Compliance Costs of Proposal.* An important effect of the proposed amendment is the saving estimated by OSHA of achieving full compliance with the revised standard compared to achieving full compliance with the existing standard. There would be costs associated with achieving full compliance with the proposed Subpart because site observations indicate there is some degree of noncompliance at most sites. Costs then represent current obligations which are not being met. Savings would be achieved in those provisions of the proposed standard which would allow greater flexibility in achieving compliance. Furthermore, a cost savings would be achieved because the employer would not have to review two standards (Subpart K and the NEC) in order to determine compliance requirements. A breakdown of the estimated industrywide compliance costs and savings from 1982 through 1987 is presented in the Table of Estimated Industrywide Compliance Costs: 1982–1986. It is estimated that the first year (1982) industrywide cost of going from current practices to full compliance with the proposed Subpart would be $113,184,386. By comparison, the first-year cost of going from current practices to full compliance with the existing Subpart would be $118,845,600. The difference between these two costs ($5,661,214) would be the compliance cost saving realized from the simplification and clarification of the standard and the recognition of lower cost compliance options by the revised standard. Annual savings roughly triple after the first year due to a substantial reduction in familiarization costs. (The cost of becoming familiar with the Subpart would apply only to new firms after the first year.) Over 5 years this would result in savings of $71,107,000 for industry compared to the cost of achieving full compliance with the existing Subpart.

TABLE OF PROVISIONS OF THE PROPOSED SUBPART HAVING IMPORTANT COST IMPLICATIONS

Proposed revision	Cost implication
1926.403(i)(1) For working clearances, minimum clear distance increased in some cases from 2.5 feet to 3 feet.	Potential increase.
1926.404(c)(1)(iii)(d) Clearance for grounds increased from 15 feet to 18 feet for open conductors over streets, alleys, roads, driveways, or other than residential property, and parking lots subject to truck traffic.	Do.
1926.404(f)(3) Under certain conditions, portable generators need not be grounded.	Potential reduction.)
1926.404(f)(7)(iii)(*A*)(3) Exempts capacitors from grounding requirement if installation is elevated on a wooden pole at a height exceeding 8 feet above ground or grade level.	Do.
1926.405(a)(2)(ii)(*c*) Prohibits use of receptacles on temporary lighting circuits.	Potential increase.
1926.405(a)(2)(ii)(*g*) Allows 120-volt portable lights to be used in hazardous locations if protected by ground-fault circuit interrupter.	Potential reduction.
1926.405(j)(2)(i) Provides that 20 ampere T-slot receptacle or cord connector may accept a 15 ampere attachment plug of same voltage rating.	Do.
1926.405(j)(4)(ii) Allows for orderly shutdown by permitting motor overloads to be connected to supervised alarm system instead of causing immediate shutdowns.	Do.
1926.407(b)(1) Allows intrinsically safe devices to be used in certain hazardous (classified) locations without the need of certain enclosures and sealing devices.	Do.
[1] 1926.407(d) Allows for interchangeability of equipment within same class and division.	Do.

Source: JACA Corp., *Final Report*, January 1983, pp. 1-6, 1-7.

[1] Provision 1926.407(d) was deleted in the final version of the proposal. While the deletion did have a small impact on the savings, the industrywide savings did not change.

(5) *Overview of Alternatives Considered.* OSHA examined four alternative courses of action as required by E.O. 12291. The first of these was to take no action at all and leave the existing standard in force. This action, however, would not address the various problems with the existing Subpart K

which require clarification and simplification, outlined earlier in this proposal. The next two alternatives considered were to issue program directives to clarify the application of the existing rule or to issue hazard alerts to inform employers of specific electrical hazards. In fact, directives and instructions already issued by OSHA in an effort to update and clarify the regulation have only served to further confuse the situation and to make the existing standard more difficult to use. Further, hazard alerts are generally issued only to deal with hazards that are currently not covered by standards. The use of alerts to clarify or amend an existing regulation would further confuse the issue. The use of alerts in the absence of a regulation would not improve safety since hazard alerts are not compulsory. The fourth alternative was to modify the existing Subpart K to adopt the entire 1981 NEC and to clarify some of the provisions of that code. None of these 4 approaches would address the problem of requiring employers to refer to two sets of published documents (Subpart K and the NEC). Nor would they solve the problem of the code containing a large amount of technical detail which is unrelated to construction worker safety. A fifth alternative would be to eliminate the existing standard. The level of injuries discussed above, however, has resulted primarily from non-compliance with the current regulation. This suggests that neither market incentives nor NEC regulations provide the desired level of safety. Given the nature of the construction industry, which is characterized by ease of entry for firms, temporary conditions at worksites, and workers who have a variety of educational, occupational and skill backgrounds, it is very likely that electrical safety would be under supplied by the private market without the OSHA standard.

TABLE OF ESTIMATED INDUSTRYWIDE COMPLIANCE COSTS: 1982–1986 [1]

[1982 dollars]

Changes in level of compliance	1982	1983	1984	1985	1986
(1) Current practices to full compliance with existing subpart	118,845,600	125,976,400	133,534,800	141,547,200	150,039,600
(2) Full compliance with existing subpart to full compliance with proposed subpart	<5,661,214>	<14,970,947>	<15,861,759>	<16,805,959>	<17,806,603>
(a) Cost due to more stringent requirements from survey sites	2,971,140	3,149,410	3,338,370	3,538,680	3,750,990
(b) Familiarization cost	8,303,144	168,720	171,420	174,163	176,950
(c) Saving from not reviewing existing subpart and 1971 NEC	0	<337,440>	<342,840>	<348,326>	<353,900>
(d) Saving estimated from hypothetical model projects	<17,826,840>	<18,696,460>	<20,030,220>	<21,232,080>	<22,505,940>
(e) Cost estimated from hypothetical model projects	891,342	944,823	1,001,511	1,061,604	1,125,297
(3) Current practices to full compliance with proposed subpart line (1) plus line (2)	113,184,386	111,005,453	117,673,041	124,741,241	132,232,997

Source: JACA Corp., *Final Report*, Jan. 1983, p. 5-20.

[1] Detailed explanation of cost development is available in Preliminary Regulatory Impact Analysis.

(B) Regulatory Flexibility Analysis and Certification

The Regulatory Flexibility Act of 1980 (Pub. L. 96-353, 94 Stat. 1164, [5 U.S.C. 601] et. seq.) requires that special consideration be given to the economic impact of a proposed regulation on small entities. Most of the construction firms subject to Subpart K are small businesses. If annual receipts of $350,000 are used as the cutoff for defining small firms, nearly 89 percent of the electrical contracting firms would fall into the "small" category. For the construction industry as a whole (i.e., SIC groups 15, 16, and 17), assuming the same cutoff, the proportion of small firms would be approximately 90 percent.

The potential impacts of compliance on individual construction firms were evaluated by developing large, medium and small size financial models of electrical contracting firms. Electrical contracting firms were used as a model because the electrical contractor is responsible for most of the electrical work on a construction site and, consequently, would bear most of the costs of compliance with the proposed Subpart K. The analysis found that in the case of the large- and medium-sized models, the effects on profitability and capital availability would be negligible, even if compliance costs were fully absorbed by the contractor.

The potential impacts of achieving full compliance on the small model firm may not be negligible; however, the net effect of the proposed revision is a savings. Using the midpoint of the range of estimated compliance costs for small firms, for example, reveals that the proposed revision would result in a savings of $174 per firm ($1,117 to achieve compliance with the existing Subpart compared to $943 to achieve compliance with proposed Subpart). In the worst-case scenario, which assumes full absorption of compliance costs, the declines in return on assets and profit margin for the small firm in achieving compliance with the proposed Subpart would be 14.2 and 14.3 percent, respectively; however, achieving compliance with the existing Subpart would incur declines of 17.0 and 17.1 percent, respectively. This worst-case scenario would not apply. First, public procurement rules (changes clause in Federal Procurement Regulations) allow the passthrough of the compliance costs of government regulations. Second, in private markets, small firms are usually specialized and consequently able to passthrough increased costs to the customer over the long run. OSHA anticipates, therefore, that most small firms will not be significantly affected.

The relatively greater burden of compliance for small firms vis-a-vis large firms arises not because of the provisions of the Subpart itself, but because our survey indicates that small firms are farther from full compliance with the existing standard than their larger competitors.

On the other hand, the simplification and clarification in the proposal and the arrangement of one set of regulations, as opposed to two (i.e., existing Subpart plus the 1971 NEC) yield even greater benefits to small firms than larger firms. Thus, on balance, the proposal leaves small firms in a much better position than they hold under the current standard.

For these reasons, OSHA certifies that the proposed revision of Subpart K of Part 1926 will not have a significant impact on a substantial number of small entities for the purposes of the Regulatory Flexibility Act.

The above discussion summarized the key findings of the Preliminary Regulatory Impact Analysis (PRIA) of the proposed revised Subpart K, Part 1926 prepared by the Office of Regulatory Analysis of the Occupational Safety and Health Administration. The PRIA includes assessments of estimated compliance costs, estimated benefits, risks, small business impacts, alternative regulatory and nonregulatory options and a profile of the industry. The PRIA is based on contract work performed for OSHA by JACA Corp. Their report, "Economic Analysis of Proposed Revisions to Subpart K, Part

1926, Final Report", January 1983, and OSHA's Preliminary Regulatory Impact Analysis are available to the public in Docket S106.

V. Public Participation

Interested persons are invited to submit written comments on the proposed standard and to file objections and request a public hearing.

Written data, views and arguments concerning the proposal must be postmarked on or before November 19, 1983 and submitted in quadruplicate to the Docket Officer, Docket No. 106, Rm. S–6212; U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken with respect to each issue.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions received will be made a part of the record of this proceeding.

Pursuant to Section 6(b)(3) of the Act of 29 CFR 1911.11(b) and (c), interested persons may file objections to the proposal, requesting an informal public hearing with respect thereto in accordance with the following conditions:

1. The objections must include the name and address of the objector;

2. The objections must be postmarked on or before November 19, 1983 and submitted to the Docket Office at the above address;

3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken, and must state the grounds therefor;

4. Each objection must be separately stated and numbered; and

5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

VI. List of Index Terms

List of Subjects in 29 CFR Part 1926

Construction safety, Electric power, Fire prevention, Flammable materials, Hazardous materials, Occupational safety and health, Safety, Signs and symbols, Tools.

VII. Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Accordingly, pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), Section 107 of the Construction Safety Act (83 Stat. 96, 40 U.S.C. 333), Secretary of Labor's Order No. 8–76 (41 FR 25059), and 29 CFR Part 1911, it is proposed to amend 29 CFR Part 1926 as set forth below.

Signed at Washington, D.C. this 29th day of September 1983.

Thorne G. Auchter

Assistant Secretary of Labor.

PART 1926—[AMENDED]

Part 1926 of Title 29 of the Code of Federal Regulations is proposed to be amended as follows:

§ 1926.151 [Amended]

1. By amending § 1926.151(a)(1) to remove the words "the requirements of the National Electrical Code, NFPA 70–1971; ANSI C1–1971 (Rev. of 1968), and".

2. By revising § 1926.152(b)(4)(v) to read as follows:

§ 1926.152 Flammable and combustible liquids.

* * * * *

(b) * * *

(4) * * *

(v) Electrical wiring and equipment located in inside storage rooms shall be approved for Class I, Division 1, Hazardous Locations. For definition of Class I, Division 1, Hazardous Locations, see § 1926.449.

* * * * *

3. By revising § 1926.351(d)(5) to read as follows:

§ 1926.351 Are welding and cutting.

* * * * *

(d) * * *

(5) See § 1926.406(c) for additional requirements.

* * * * *

4. By revising § 1926.600(a)(6) to read as follows:

§ 1926.600 Equipment.

(a) * * *

(6) All equipment covered by this subpart shall comply with the requirements of § 1926.550(a)(15) when working or being moved in the vicinity of power lines or energized transmitters.

* * * * *

5. By revising § 1926.803(j)(3) to read as follows:

§ 1926.803 Compressed air.

* * * * *

(j) * * *

(3) All electrical equipment and wiring for light and power circuits shall comply with the requirements of Subpart K of this part for use in damp, hazardous, high temperature, and compressed air environments.

* * * * *

(Sec. 6(b), Pub. L. 91–596, 84 Stat. 1593 (29 U.S.C. 655); Sec. 107, Pub. L. 91–54, 83 Stat. 96 (40 U.S.C. 333); Secretary of Labor's Order No. 8–76 (41 FR 25059); 29 CFR Part 1911)

§§ 1926.400 and 1926.404 [Amended]

6. By redesignating existing § 1926.400(h) as § 1926.404(b)(1).

7. By revising Subpart K of 29 CFR Part 1926 to read as follow:

* * * * *

Subpart K—Electrical

General

Sec.

1926.400 Introduction.
1926.401 [Reserved]

Installation Safety Requirements

1926.402 Applicability.
1926.403 General requirements.
1926.404 Wiring design and protection.
1926.405 Wiring methods, components, and equipment for general use.
1926.406 Specific purpose equipment and installations.
1926.407 Hazardous (classified) locations.
1926.408 Special systems.
1926.409–1926.415 [Reserved]

Safety-Related Work Practices

1926.416 General requirements.
1926.417 Lockout and tagging of circuits.
1926.418–1926.430 [Reserved]

Safety-Related Maintenance and Environmental Considerations

1926.431 Maintenance of equipment.
1926.432 Environmental deterioration of equipment.
1926.433–1926.440 [Reserved]

Safety Requirements for Special Equipment

1926.4441 Batteries and battery charging.
1926.442–1926.448 [Reserved]

Definitions

1926.449 Definitions applicable to this subpart.

Authority: Section 6(b) Pub. L. 91–596, 84 Stat. 1593 (29 U.S.C. 655); Sec. 107, Pub. L. 91–54, 83 Stat. 96 (40 U.S.C. 333); Secretary of Labor's Order No. 8–76 (41 FR 25059); 29 CFR Part 1911.

Subpart K—Electrical

General

§ 1926.400 Introduction

This subpart addresses electrical safety requirements that are necessary for the practical safeguarding of employees and is divided into four major divisions and applicable definitions as follows:

(a) *Installation safety requirements.* Installation safety requirements are contained in §§ 1962.402 through

1926.408. Included in this category are all electric equipment and installations used to provide electric power and light on jobsites.

(b) *Safety-related work practices.* Safety-related work practices are contained in §§ 1926.416 and 1926.417. In addition to covering the hazards arising from the use of electricity at jobsites, these regulations also cover the hazards arising from the accidental contact, direct or indirect, by employees with all energized lines, above or below ground, passing through or near the jobsite.

(c) *Safety-related maintenance and environmental considerations.* Safety-related maintenance and environmental considerations are contained in §§ 1926.431 and 1926.432.

(d) *Safety requirements for special equipment.* Safety requirements for special equipment are contained in § 1926.441.

(e) *Definitions.* Definitions applicable to this subpart are contained in § 1926.449.

§ 1926.401 [Reserved]

Installation Safety Requirements

§ 1926.402 Applicability.

(a) Sections 1926.402 through 1926.408 contain installation safety requirements for electrical equipment and installations used to provide electric power and light.

(b) These regulations apply only to electrical installations on the jobsite, both temporary and permanent. For power distribution and transmission lines, see Subpart V of this part.

§ 1926.403 General requirements.

(a) *Approval.* The conductors and equipment required or permitted by this subpart shall be approved.

(b) *Examination, installation, and use of equipment*—(1) *Examination.* The employer shall ensure that electrical equipment is free from recognized hazards that are likely to cause death or serious physical harm to employees. Safety of equipment shall be determined using the following considerations:

(i) Suitablity for installation and use in conformity with the provisions of this subpart. Suitability of equipment for an identified purpose may be evidenced by listing or labeling for that identified purpose.

(ii) Mechanical strength and durability, including, for parts designed to enclose and protect other equipment, the adequacy of the protection thus provided.

(iii) Electrical insulation.

(iv) Heating effect under conditions of use.

(v) Arcing effects.

(vi) Classification by type, size, voltage, current capacity, specific use.

(vii) Other factors which contribute to the practical safeguarding of employees using or likely to come in contact with the equipment.

(2) *Installation and use.* Listed or labled equipment shall be used and installed in accordance with any instructions included in the listing or labeling.

(c) *Interrupting rating.* Equipment intended to break current shall have an interrupting rating at system voltage sufficient for the current that must be interrupted.

(d) *Mounting and cooling of equipment*—(1) *Mounting.* Electric equipment shall be firmly secured to the surface on which it is mounted. Wooden plugs driven into holes in masonry, concrete, plaster, or similar materials shall not be used.

(2) *Cooling.* Electrical equipment which depends upon the natural circulation of air and convection principles for cooling of exposed surfaces shall be installed so that room air flow over such surfaces is not prevented by walls or by adjacent installed equipment. For equipment designed for floor mounting, clearance between top surfaces and adjacent surfaces shall be provided to dissipate rising warm air. Electrical equipment provided with ventilating opening shall be installed so that walls or other obstructions do not prevent the free circulation of air through the equipment.

(e) *Splices.* Conductors shall be splices or joined with splicing devices designed for the use or by brazing, welding, or soldering with a fusible metal or alloy. Soldered splices shall first be so spliced or joined as to be mechanically and electrically secure without solder and then soldered. All splices and joints and the free ends of conductors shall be covered with an insulation equivalent to that of the conductors or with an insulating device designed for the purpose.

(f) *Arcing parts.* Parts of electric equipment which in ordinary operation produce arcs, sparks, flames, or molten metal shall be enclosed or separated and isolated from all combustible material.

(g) *Marking.* Electrical equipment shall not be used unless the manufacturer's name trademark, or other descriptive marking by which the organization responsible for the product may be identified is placed on the equipment. Other marking shall be provided giving voltage, current, wattage, or other ratings as necessary. The marking shall be of sufficient durability to withstand the environment involved.

(h) *Identification of disconnecting means and circuits.* Each disconnecting means required by this subpart for motors and appliances shall be legibly marked to indicate its purpose, unless located and arranged so the purpose is evident. Each service, feeder, and branch circuit, at its disconnecting means or overcurrent device, shall be legibly marked to indicate its purpose, unless located and arranged so the purpose is evident. These markings shall be of sufficient durability to withstand the environoment involved.

(i) *600 Volts, nominal, or less.* This paragraph applies to equipment operating at 600 volts, nominal, or less.

(l) *Working space about electric equipment.* Sufficient access and working space shall be provided and maintained about all electric equipment to permit ready and safe operation and maintenance of such equipment.

(i) *Working clearances.* Except as required or permitted elsewhere in this subpart, the dimension of the working space in the direction of access to live parts operating at 600 volts or less and likely to require examination, adjustment, servicing, or maintenance while alive shall not be less than indicated in Table K–1. In addition to the dimensions shown in Table K–1, workspace shall not be less than 30 inches (762 mm) wide in front of the electric equipment. Distances shall be measured from the live parts if they are exposed, or from the enclosure front or opening if the live parts are enclosed. Walls constructed of concrete, brick, or tile are considered to be grounded. Working space is not required in back of assemblies such as dead-front switchboards or motor control centers where there are no renewable or adjustable parts such as fuses or switches on the back and where all connections are accessible from locations other then the back.

TABLE K–1—WORKING CLEARANCES

Nominal voltage to ground	Minimum clear distance for conditions [1]		
	(a) Feet [2]	(b) Feet [2]	(c) Feet [2]
0 to 150	3	3	3
151 to 600	3	3½	4

[1] Conditions (a), (b), and (c) are as follows: (a) Exposed live parts on one side and no live or grounded parts on the other side of the working space, or exposed live parts on both sides effectively guarded by insulating material. Insulated wire or insulatd busbars operating at not over 300 volts are not considered live parts. (b) Exposed live parts on one side and grounded parts on the other side. (c) Exposed live parts on both sides of the workspace (not guarded as provide in Condition (a)) with the operator between.

[2] NOTE.—For International System of Units (SI): one foot = 0.3048 m.

(ii) *Clear spaces.* Working space required by this subpart shall not be used for storage. When normally enclosed live parts are exposed for inspection or servicing, the working space, if in a passageway of general open space, shall be guarded.

(iii) *Access and entrance to working space.* At least one entrance shall be provided to give access to the working space about electric equipment.

(iv) *Front working space.* Where there are live parts normally exposed on the front of switchboards or motor control centers, the working space in front of such equipment shall not be less than 3 feet (914 mm).

(v) *Headroom.* The minimum headroom of working spaces about service equipment, switchboards, panelboards, or motor control centers shall be 6 feet 3 inches (1.91 m).

(2) *Guarding of live parts.* (i) Except as required or permitted elsewhere in this subpart, live parts of electric equipment operating at 50 volts or more shall be guarded against accidental contact by approved cabinets or other forms of approved enclosures, or by any of the following means:

(A) By location in a room, vault, or similar enclosure that is accessible only to qualified persons.

(B) By partitions or screens so arranged that only qualified persons will have access to the space within reach of the live parts. Any openings in such partitions or screens shall be so sized and located that persons are not likely to come into accidental contact with the live parts or to bring conducting objects into contact with them.

(C) By location on a balcony, gallery, or platform so elevated and arranged as to exclude unqualified persons.

(D) By elevation of 8 feet (2.44 m) or more above the floor or other working surface and so installed to exclude unqualified persons.

(ii) In locations where electric equipment would be exposed to physical damage, enclosures or guards shall be so arranged and of such strength as to prevent such damage.

(iii) Entrances to rooms and other guarded locations containing exposed live parts shall be marked with conspicuous warning signs forbidding unqualified persons to enter.

(j) *Over 600 volts, nominal*—(1) *General.* Conductors and equipment used on circuits exceeding 600 volts, nominal shall comply with all applicable provisions of paragraphs (a) through (g) of this section and with the following provisions which supplement or modify those requirements. The provisions of paragraphs (j) (2), (3), and (4) of this section do not apply to equipment on the supply side of the service conductors.

(2) *Enclosure for electrical installations.* Electrical intallations in a vault, room, closet or in an area surrounded by a wall, screen, or fence, access to whch is controlled by lock and key or other approved means, are considered to be accessible to qualified person only. A wall, screen, or fence less than 8 feet (2.44 m) in height is not considered adequate to prevent access unless it has other features that provide a degree of isolation equivalent to an 8-foot (2.44-m) fence. The enterances to all buildings, rooms or enclosures containing exposed live parts or exposed conductors operating at over 600 volts, nominal, shall be kept locked or shall be under the observation of a qualified person at all times.

(i) *Installations accessible to qualified persons only:* Electrical intallations having exposed live parts shall be accessible to qualified persons only and shall comply with the applicable provisions of paragraph (j) (3) of this section.

(ii) *Installations accessible to unqualified persons.* Electrical installations that are open to unqualified persons shall be made with metal-enclosed equipment or shall be enclosed in a vault or in an area, access to which is controlled by a lock. Metal-enclosed switchgear, unit substations, transformers, pull boxes, connection boxes, and other similar associated equipment shall be marked with appropriate caution signs. If equipment is exposed to physical damage from vehicular traffic, guards shall be provided to prevent such damage. Ventilating or similar openings in metal-enclosed equipment shall be designed so that foreign objects inserted through these openings will be deflected from energized parts.

(3) *Workspace about equipment.* Sufficient space shall be provided and maintained about electric equipment to permit ready and safe operation and maintenance of such equipment. Where energized parts are exposed, the minimum clear workspace shall not be less than 6 feet 6 inches (1.98 m) high (measured vertically from the floor or platform), or less than 3 feet (914 mm) wide (measured parallel to the equipment). The depth shall be as required in Table K-2. The workspace shall be adequate to premit at least a 90-degree opening od doors of hinged panels.

(i) *Working space.* The minimum clear working space in front of electric equipment such as switchboards, control panels, switches, circuit breakers, motor controller, relays, and similar equipment shall not be less than specified in Table K-2 unles otherwise specified in this subpart. Distances shall be measured from the live parts if they are exposed, or from the enclosure front or opening if the live parts are enclosed. However, working space is not required in back of equipment such as deadfront switchboards or control assemblies where there are no renewable or adjustable parts (such as fuses or switches) on the back and where all connections are accessible from locations other than the back. Where rear access is required to work on de-energized parts on the back of enclosed equipment, a minimum working space of 30 inches (762 mm) horizontally shall be provided.

TABLE K-2—MINIMUM DEPTH OF CLEAR WORKING SPACE IN FRONT OF ELECTRIC EQUIPMENT

Nominal voltage to ground	Conditions [1]		
	(a) Feet [2]	(b) Feet [2]	(c) Feet [2]
601 to 2,500	3	4	5
2,501 to 9,000	4	5	6
9,001 to 25,000	5	6	9
25,001 to 75 kV	6	8	10
Above 75 kV	8	10	12

[1] Conditions (a), (b), and (c) are as follows: (a) Exposed live parts on one side and no live or grounded parts on the other side of the working space, or exposed live parts on both sides effectively guarded by insulating materials. Insulated wire or insulated busbars operating at not over 300 volts are not considered live parts. (b) Exposed live parts on one side and grounded parts on the other side. Walls constructed of concrete, brick, or tile are considered to be grounded surfaces. (c) Exposed live parts on both sides of the workspace (not guarded as provided in Condition (a)) with the operator between.

[2] NOTE.—For SI units: one foot = 0.3048 m.

(ii) *Lighting outlets and points of control.* The lighting outlets shall be so arranged that persons changing lamps or making repairs on the lighting system will not be endangered by live parts or other equipment. The points of control shall be so located that persons are not likely to come in contact with any live part or moving part of the of the equipment while traning on the lights.

(iii) *Elevation of unguarded live parts.* Unguarded live parts above working space shall be maintained at elevations not less than specified in Table K-3.

TABLE K-3.—ELEVATION OF UNGUARDED ENERGIZED PARTS ABOVE WORKING SPACE

Nominal voltage between phases	Minimum elevation
601 to 7,500	[1] 6 feet 6 inches.
7,501 to 35,000	9 feet.
Over 35kV	9 feet + 0.57 inches per kV above 35kV.

[1] NOTE.— For SI units: one inch = 25.4 mm; one foot = 0.3048m.

(4) *Entrance and access to workspace.* At least one entrance not less than 24

inches (610 mm) wide and 6 feet 6 inches (1.98 m) high shall be provided to give access to the working space about electric equipment. On switchboard and control panels exceeding 48 inches (1.22 m) in width, there shall be one entrance at each end of such board where practicable. Where bare energized parts at any voltage or insulated energized parts above 600 volts are located adjacent to such entrance, they shall be guarded.

§ 1926.404 Wiring design and protection.

(a) *Use and identification of grounded and grounding conductors*—(1) *Identification of conductors.* A conductor used as a grounded conductor shall be identifiable and distinguishable from all other conductors. A conductor used as an equipment conductor shall be identifiable and distinguishable from all other conductors.

(2) *Polarity of connections.* No grounded conductor shall be attached to any terminal or lead so as to reverse designated polarity.

(3) *Use of grounding terminals and devices.* A grounding terminal or ground-type device on a receptacle, cord connector, or attachment plug shall not be used for purposes other than grounding.

(b) *Branch Circuits*—(1) *Ground-fault protection.* [Reserved.]

(2) *Outlet devices.* Outlet devices shall have an ampere rating not less than the load to be served and shall comply with the following:

(i) *Lampholders.* Where connected to a branch circuit having a rating in excess of 20 amperes, lampholders shall be of the heavy-duty type. A heavy-duty lampholder shall have a rating of not less than 660 watts if of the admedium type and not less than 750 watts if of any other type

(ii) *Receptacles.*

(A) A single receptacle installed on an individual branch circuit shall have an ampere rating of not less than that of the branch circuit.

(B) Where connected to a branch circuit supplying two or more receptacles or outlets, receptacle ratings shall conform to the values listed in Table K-4.

(C) The rating of an attachment plug or receptacle use for cord-and plug-connection of a motor to a branch circuit shall not exceed 15 amperes at 125 volts or 10 amperes at 250 volts if individual overload protection is omitted.

TABLE K-4.—RECEPTACLE RATINGS FOR VARIOUS SIZE CIRCUITS

Circuit rating, amperes	Receptacle rating, amperes
15	not over 15.
20	15 or 20.
30	30.
40	40 or 50.
50	50.

(c) *Outside conductors and lamps*—(1) *600 volts, nominal, or less.* Paragraphs (c)(1) (i) through (v) of this section apply to branch circuit, feeder, and service conductors rated 600 volts, nominal, or less and run outdoors as open conductors.

(i) *Minimum size of conductor.* (A) Overhead conductors shall not be smaller than No. 10 copper or No. 8 aluminum for spans up to 50 feet (15.2 m) in length and No. 8 copper or No. 6 aluminum for a longer span.

(B) Overhead conductors for festoon lighting shall not be smaller than No. 12 unless supported by messenger wires. In spans exceeding 40 feet (12.2 m), the conductors shall be supported by a messenger wire; and the messenger wire shall be supported by strain insulators. Conductors or messenger wires shall not be attached to any fire escape, downspout, or plumbing equipment.

(ii) *Conductors on poles.* Conductors supported on poles shall provide a horizontal climbing space not less than the following:

(A) Power conductors below communication conductors—30 inches (762 mm).

(B) Power conductors alone or above communication conductors: 300 volts or less—24 inches (610 mm); more than 300 volts—30 inches (762 mm).

(C) Communication conductors below power conductors: with power conductors 300 volts or less—24 inches (610 mm); more than 300 volts—30 inches (762 mm).

(iii) *Clearance from ground.* Open conductors shall conform to the following minimum clearances:

(A) 10 feet (3.05 m)—above finished grade, sidewalks, or from any platform or projection from which they might be reached where the supply conductors are limited to 150 volts to ground and accessible only to employees on foot.

(B) 12 feet (3.66 m)—Over driveways and other similar areas, such as parking lots, not subject to truck traffic where the supply conductors are limited to 300 volts to ground.

(C) 15 feet (4.57 m)—above finished grade where the supply conductors have a nominal voltage greater than 300 volts to ground and accessible only to employees on foot.

(D) 18 feet (5.49 m)—over streets, alleys, roads, driveways and other areas subject to truck traffic.

(iv) *Clearance from building openings.* Conductors shall have a clearance of at least 3 feet (914 mm) from windows, doors, fire escapes, or similar locations. Conductors run above the top level of a window are considered to be out of reach from that window and, therefore, do not have to be 3 feet (914 mm) away.

(v) *Clearance over roofs.* Conductors above roof space accessible to employees on foot shall have a clearance from the highest point of the roof surface of not less than 8 feet (2.44 m) vertical clearance for insulated conductors, not less than 10 feet (3.05 m) vertical or diagonal clearance for covered conductors, and not less than 15 feet (4.57 m) for bare conductors, except that:

(A) Where the roof space is also accessible to vehicular traffic, the vertical clearance shall not be less than 18 feet (5.49 m), or

(B) Where the roof space is not normally accessible to employees on foot, fully insulated conductors shall have a vertical or diagonal clearance of not less than 3 feet (914 mm), or

(C) where the voltage between conductors is 300 volts or less and the roof has a slope of not less than 4 inches (102 mm) in 12 inches (305 mm), the clearance from roofs shall be at least 3 feet (914 mm), or

(D) Where the voltage between conductors is 300 volts or less and the conductors do not pass over more than 4 feet (1.22 m) of the overhang portion of the roof and they are terminated at a through-the-roof raceway or support, the clearance from roofs shall be at least 18 inches (457 mm).

(2) *Over 600 volts, nominal.* Overhead conductors rated over 600 volts, nominal, shall not be smaller than No. 6 copper or No. 4 aluminum if they are run as open individual conductors.

(3) *Location of outdoor lamps.* Lamps for outdoor lighting shall be located below all live conductors, transformers, or other electric equipment, unless such equipment is controlled by a disconnecting means that can be locked in the open position or unless adequate clearances or other safeguards are provided for relamping operations.

(d) *Services—(1) Disconnecting means—(i) General.* Means shall be provided to disconnect all conductors in a building or other structure from the service-entrance conductors. The disconnecting means shall plainly indicate whether it is in the open or closed position and shall be installed at a readily accessible location nearest the

point of entrance of the service-entrance conductors.

(ii) *Simultaneous opening of poles.* Each service disconnecting means shall simultaneoulsy disconnect all ungrounded conductors.

(2) *Services over 600 volts, nominal.* The following additional requirements apply to services over 600 volts, nominal.

(i) *Guarding.* Service-entrance conductors installed as open wires shall be guarded to make them accessible only to qualified persons.

(ii) *Warning signs.* Signs warning of high voltage shall be posted where unauthorized employees might come in contact with live parts.

(e) *Overcurrent protection*—(1) *600 Volts, nominal, or less.* The following requirements apply to overcurrent protection of circuits rated 600 volts, nominal, or less.

(i) *Protection of conductors and equipment.* Conductors and equipment shall be protected from overcurrent in accordance with their ability to safely conduct current. Conductors shall have sufficient ampacity to carry the load.

(ii) *Ground conductors.* Except for motorrunning overload protection, overcurrent devices shall not interrupt the continuity of the grounded conductor unless all conductors of the circuit are opened simultaneously.

(iii) *Disconnection of fuses and thermal cutouts.* Except for service fuses, all cartridge fuses which are accessible to other than qualified persons and all fuses and thermal cutouts on circuits over 150 volts to ground shall be provided with disconnecting means. This disconnecting means shall be installed so that the fuse or thermal cutout can be disconnected from its supply without disrupting service to equipment and circuits unrelated to those protected by the overcurrent device.

(iv) *Location in or on premises.* Overcurrent devices shall be readily accessible. Overcurrent devices shall not be located where they could create an employee safety hazard by being exposed to physical damage or located in the vicinity of easily ignitible material.

(v) *Arcing or suddenly moving parts.* Fuses and circuit breakers shall be so located or shielded that employees will not be burned or otherwise injured by their operation.

(vi) *Circuit breakers.* (A) Circuit breakers shall clearly indicate whether they are in the open (off) or closed (on) position.

(B) Where circuit breaker handles on switchboards are operated vertically rather than horizontally or rotationally, the up position of the handle shall be the closed (on) position.

(C) If used as switches in 120-volt, fluorescent lighting circuits, circuit breakers shall be approved and marked "SWD."

(2) *Over 600 volts, nominal.* Feeders and branch circuits over 600 volts, nominal, shall have short-circuit protection.

(f) *Grounding.* Paragraphs (f) (1) through (11) of this section contain grounding requirements for systems, circuits, and equipment.

(1) *Systems to be grounded.* The following systems which supply premises wiring shall be grounded:

(i) All 3-wire DC systems shall have their neutral conductor grounded.

(ii) Two-wire DC systems operating at over 50 volts through 300 volts between conductors shall be grounded unless they are rectifier-derived from an AC system complying with paragraph (f)(1)(iii), (f)(1)(iv), and (f)(1)(v) of this section.

(iii) AC circuits of less than 50 volts shall be grounded if they are installed as overhead conductors outside of buildings or if they are supplied by transformers and the transformer primary supply system is ungrounded or exceeds 150 volts to ground.

(iv) AC systems of 50 volts to 1000 volts shall be grounded under any of the following conditions, unless exempted by paragraph (f)(1)(v) of this section:

(A) If the system can be so grounded that the maximum voltage to ground on the ungrounded conductors does not exceed 150 volts;

(B) If the system is nominally rated 480Y/277 volt, 3-phase, 4-wire in which the neutral is used as a circuit conductor;

(C) If the system in nominally rated 240/120 volt, 3-phase, 4-wire in which the midpoint of one phase is used as a circuit conductor; or

(D) If a service conductor is uninsulated.

(v) AC systems of 50 volts to 1000 volts are not required to be grounded if the system is separately derived and is supplied by a transformer that has a primary voltage rating less than 1000 volts, provided all of the following conditions are met:

(A) The system is used exclusively for control circiuts,

(B) The conditions of maintenance and supervision assure that only qualified persons will service the installation,

(C) Continuity of control power is required, and

(D) Ground detectors are installed on the control system.

(2) *Separately derived systems.* Where paragraph (f)(1) of this section requires grounding of wiring systems whose power is derived from generator, transformer, or converter windings and has no direct electrical connection, including a solidly connected grounded circuit conductor, to supply conductors originating in another system, paragraph (f)(5) of this section shall also apply.

(3) *Portable and vehicle-mounted generators* —(i) *Portable generators. Under the following conditions, the frame of a portable generator need not be grounded and may serve as the grounding electrode for a system supplied by the generator:*

(A) The generator supplies only equipment mounted on the generator and/or cord-and plug-connected equipment through receptacles mounted on the generator, and

(B) The noncurrent-carrying metal parts of equipment and the equipment grounding conductor terminals of the receptacles are bonded to the generator frame.

(ii) *Vehicle-mounted generators.* Under the following conditions the frame of a vehicle may serve as the grounding electrode for a system supplied by a generator located on the vehicle:

(A) The frame of the generator is bonded to the vehicle frame, and

(B) The generator supplies only equipment located on the vehicle and/or cord-and plug-connected equipment through receptacles mounted on the vehicle or on the generator, and

(C) The noncurrent-carrying metal parts of equipment and the equipment grounding conductor terminals of the receptacles are bonnded to the generator frame, and

(D) The system complies with all other provisions of the section.

(iii) *Neutral conductor bonding.* A neutral conductor shall be bonded to the generator frame if the generator is a component of a separately derived system. No other conductor need be bonded to the generator frame.

(4) *Conductors to be grounded.* For AC premises wiring systems the identified conductor shall be grounded.

(5) *Grounding connections.* (i) For a grounded system, a grounding electrode conductor shall be used to connect both the equipment grounding conductor and the grounded circuit conductor to the grounding electrode. Both the equipment grounding conductor and the grounding electrode conductor shall be connected to the grounded circuit conductor on the supply side of the service disconnecting means, or on the supply side of the system disconnecting means or

overcurrent devices if the system is separately derived.

(ii) For an ungrounded service-supplied system, the equipment grounding conductor shall be connected to the grounding electrode conductor at the service equipment. For an ungrounded separately derived system, the equipment grounding conductor shall be connected to the grounding electrode conductor at, or ahead of, the system disconnecting means or overcurrent devices.

(6) *Grounding path.* The path to ground from circuits, equipment, and enclosures shall be permanent and continuous.

(7) *Supports, enclosures, and equipment to be grounded*—(i) *Supports and enclosures for conductors.* Metal cable trays, metal raceways, and metal enclosures for conductors shall be grounded, except that:

(A) Metal enclosures such as sleeves that are used to protect cable assemblies from physical damage need not be grounded; and

(B) Metal enclosures for conductors added to existing installations of open wire, knob-and-tube wiring, and nonmetallic-sheathed cable need not be grounded if all of the following conditions are met: (*1*) Runs are less than 25 feet (7.62 m); (*2*) enclosures are free from probable contact with ground, grounded metal, metal laths, or other conductive materials; and (*3*) enclosures are guarded against employee contact.

(ii) *Service equipment enclosures.* Metal enclosures for service equipment shall be grounded.

(iii) *Fixed equipment.* Exposed non-current-carrying metal parts of fixed equipment which may become energized shall be grounded under any of the following conditions:

(A) If within 8 feet (2.44 m) vertically or 5 feet (1.52 m) horizontally of ground or grounded metal objects and subject to employee contact.

(B) If located in a wet or damp location and subject to employee contact.

(C) If in electrical contact with metal.

(D) If in a hazardous (classified) location.

(E) If supplied by a metal-clad, metal-sheathed, or grounded metal raceway wiring method.

(F) If equipment operates with any terminal at over 150 volts to ground; however, the following need not be grounded:

(*1*) Enclosures for switches or circuit breakers used for other than service equipment and accessible to qualified persons only;

(*2*) Metal frames of electrically heated appliances which are permanently and effectively insulated from ground; and

(*3*) The case of distribution apparatus such as transformers and capacitors mounted on wooden poles at a height exceeding 8 feet (2.44 m) above ground or grade level.

(iv) *Equipment connected by cord and plug.* Under any of the conditions described in paragraphs (f)(7)(iv) (*A*) through (*C*) of this section, exposed non-current-carrying metal parts of cord- and plug-connected equipment which may become energized shall be grounded:

(A) If in a hazardous (classified) location (see § 1926.407).

(B) If operated at over 150 volts to ground, except for guarded motors and metal frames of electrically heated applicances if the appliance frames are permanently and effectively insulated from ground.

(C) If the equipment is one of the types listed in paragraphs (f)(7)(iv)(*C*)(*1*) through (f)(7)(iv)(*C*)(*5*) of this section. However, even though the equipment is one of these types, it need not be grounded if it is exempted by paragraph (f)(7)(iv)(*C*)(*6*).

(*1*) Hand-held motor-operated tools;

(*2*) Cord- and plug-connected equipment used in damp or wet locations or by employees standing on the ground or on metal floors or working inside of metal tanks or boilers;

(*3*) Portable and mobile X-ray and associated equipment;

(*4*) Tools likely to be used in wet and/or conductive locations; and

(*5*) Portable hand lamps.

(*6*) Tools likely to be used in wet and/or conductive locations need not be grounded if supplied through an isolating transformer with an ungrounded secondary of not over 50 volts. Listed or labeled portable tools and appliances protected by an approved system of double insulation, or its equivalent, need not be grounded. If such a system is employed, the equipment shall be distinctively marked to indicate that the tool or appliance utilizes an approved system of double insulation.

(v) *Nonelectrical equipment.* The metal parts of the following nonelectrical equipment shall be grounded: frames and tracks of electrically operated cranes; frames of nonelectrically driven elevator cars to which electric conductors are attached; hand operated metal shifting ropes or cables of electric elevators, and metal partitions, grill work, and similar metal enclosures around equipment of over 1kV between conductors.

(8) *Methods of grounding equipment.* (i) Non-current-carrying metal parts of fixed equipment, if required to be grounded by this subpart, shall be grounded by an equipment grounding conductor which is contained within the same raceway, cable, or cord, or runs with or encloses the circuit conductors. For DC circuits only, the equipment grounding conductor may be run separately from the circuit conductors.

(ii) A conductor used for grounding fixed or movable equipment shall have capacity to conduct safely any fault current which may be imposed on it.

(iii) Electric equipment is considered to be effectively grounded if it is secured to, and in electrical contact with, a metal rack or structure that is provided for its support and the metal rack or structure is grounded by the method specified for the non-current-carrying metal parts of fixed equipment in paragraph (f)(8)(i) of this section. Metal car frames supported by metal hoisting cables attached to or running over metal sheaves or drums of grounded elevator machines are also considered to be effectively grounded.

(9) *Bonding.* Where bonding conductors are used to assure electrical continuity they shall have the capacity to conduct any fault current which may be imposed.

(10) *Made electrodes.* Where made electrodes are used, they shall be free from nonconductive coatings, such as paint or enamel; and where practicable, they shall be embedded below permanent moisture level. A single electrode consisting of a rod, pipe or plate which has a resistance to ground greater than 25 ohms shall be augmented by one additional electrode installed no closer than 6 feet (1.83 m) to the first electrode.

(11) *Grounding of systems and circuits of 1000 volts and over (high voltage)*—(i) *General.* If high voltage systems are grounded, they shall comply with all applicable provisions of paragraphs (f)(1) through (f)(9) of this section as supplemented and modified by this paragraph (f)(11).

(ii) *Grounding of systems supplying portable or mobile equipment.* Systems supplying portable or mobile high voltage equipment, other than substations installed on a temporary basis, shall comply with the following:

(A) Portable and mobile high voltage equipment shall be supplied from a system having its neutral grounded through an impedance. If a delta-connected high voltage system is used to supply the equipment, a system neutral shall be derived.

(B) Exposed non-current-carrying metal parts of portable and mobile equipment shall be connected by an

equipment grounding conductor to the point at which the system neutral impedance is grounded.

(C) Ground-fault detection and relaying shall be provided to automatically de-energize any high voltage system component which has developed a ground fault. The continuity of the equipment grounding conductor shall be continuously monitored so as to de-energize automatically the high voltage feeder to the portable equipment upon loss of continuity of the equipment grounding conductor.

(D) The grounding electrode to which the portable or mobile equipment system neutral impedance is connected shall be isolated from and separated in the ground by at least 20 feet (6.1m) from any other system or equipment grounding electrode, and there shall be no direct connection between the grounding electrodes, such as buried pipe, fence or like objects.

(iii) *Grounding of equipment.* All non-current-carrying metal parts of portable equipment and fixed equipment including their associated fences, housings, enclosures, and supporting structures shall be grounded. However, equipment which is guarded by location and isolated from ground need not be grounded. Additionally, pole-mounted distribution apparatus at a height exceeding 8 feet (2.44m) above ground or grade level need not be grounded.

§ 1926.405 Wiring methods, components, and equipment for general use.

(a) *Wiring methods.* The provisions of this paragraph do not apply to conductors which form an intergral part of utilization equipment such as motors, controllers, motor control centers and like equipment.

(1) *General requirements*—(i) *Electrical continuity of metal raceways and enclosures.* Metal raceways, cable armor, and other metal enclosures for conductors shall be metallically joined together into a continuous electric conductor and shall be so connected to all boxes, fittings, and cabinets as to provide effective electrical continuity.

(ii) *Wiring in ducts.* No wiring systems of any type shall be installed in ducts used to transport dust, loose stock or flammable vapors. No wiring system of any type shall be installed in any duct used for vapor removal or in any shaft containing only such ducts.

(2) *Temporary wiring*—(i) *Scope.* The provisions of this paragraph apply to temporary electrical power and lighting wiring methods which may be of a class less than would be required for a permanent installation. Except as specifically modified in this paragraph, all other requirements of this subpart for permanent wiring shall apply to temporary wiring installations. Temporary wiring shall be removed immediately upon completion of construction or the purpose for which the wiring was installed.

(ii) *General requirements for temporary wiring.* (A) Feeders shall originate in an approved distribution center. The conductors shall be run as multiconductor cord or cable assemblies or within raceways; or, where not subject to physical damage, they may be run as open conductors on insulators not more than 10 feet (3.05 m) apart.

(B) Branch circuits shall originate in an approved power outlet or panelboard. Conductors shall be run as multiconductor cord or cable assemblies or open conductors, or shall be run in raceways. All conductors shall be protected by overcurrent devices at their rated ampacity. Runs of open conductors shall be located where the conductors will not be subject to physical damage, and the conductors shall be fastened at intervals not exceeding 10 feet (3.05 m). No branch-circuit conductors shall be laid on the floor. Each branch circuit that supplies receptacles or fixed equipment shall contain a separate equipment grounding conductor if the branch circuit in run as open conductors.

(C) Receptacles shall be of the grounding type. Unless installed in a complete metallic raceway, each branch circuit shall contain a separate equipment grounding conductor, and all receptacles shall be electrically connected to the grounding conductor. Receptacles for uses other than temporary lighting shall not be installed on branch circuits which supply temporary lighting. Receptacles shall not be connected to the same ungrounded conductor of multiwire circuits which supply temporary lighting.

(D) Disconnecting switches or plug connectors shall be installed to permit the disconnection of all ungrounded conductors of each temporary circuit.

(E) All lamps for general illumination shall be protected from accidental contact or breakage. Temporary lights shall be equipped with guards to prevent accidental contact with the bulb, except that guards are not required when the construction of the reflector is such that the bulb is deeply recessed. Metal-case sockets shall be grounded.

(F) Temporary lights shall not be suspended by their electric cords unless cords and lights are designed for this means of suspension.

(G) Portable electric lighting used in wet and/or other conductive locations, as for example, drums, tanks, and vessels shall be operated at 12 volts or less. However, 120 volt lights may be used if protected by a ground-fault circuit interrupter.

(H) A box shall be used wherever a change is made to a raceway system or a cable system which is metal clad or metal sheathed.

(I) Flexible cords and cables shall be protected from accidental damage. Sharp corners and projections shall be avoided. When passing through doorways or other pinch points, protection shall be provided to avoid damage.

(J) Extension cords used with portable electric tools and appliances shall be of three-wire type and shall be designed for hard extra-hard usage.

(iii) *Guarding.* For temporary wiring over 600 volts, nominal, fencing, barriers, or other effective means shall be provided to prevent access of other than authorized and qualified personnel.

(b) *Cabinets, boxes, and fittings*—(1) *Conductors entering boxes, cabinets, or fittings.* Conductors entering boxes, cabinets, or fittings shall be protected from abrasion, and openings through which conductors enter shall be effectively closed. Unused openings in cabinets, boxes, and fittings shall also be effectively closed.

(2) *Covers and canopies.* All pull boxes, junction boxes, and fittings shall be provided with covers. If metal covers are used, they shall be grounded. In energized installations each outlet box shall have a cover, faceplate, or fixture canopy. Covers of outlet boxes having holes through which flexible cord pendants pass shall be provided with bushings designed for the purpose or shall have smooth, well-rounded surfaces on which the cords may bear.

(3) *Pull and junction boxes for systems over 600 volts, nominal.* In addition to other requirements in this section for pull and junction boxes, the following shall apply to these boxes for systems over 600 volts, nominal:

(i) Boxes shall provide a complete enclosure for the contained conductors or cables.

(ii) Box shall be closed by covers securely fastened in place. Underground box covers that weigh over 100 pounds (43.6 kg) meet this requirement. Covers for boxes shall be permanently marked "High Voltage." The marking shall be on the outside of the box cover and shall be readily visible and legible.

(c) *Knife switches.* Single-throw knife switches shall be so connected that the blades are dead when the swith is in the open position. Singled-throw knife switches shall be so placed that gravity will not tend to close them. Single-throw knife switches approved for use in the

inverted position shall be provided with a locking device that will ensure that the blades remain in the open position when so set. Double-throw knife switches may be mounted so that the throw will be either vertical or horizontal. However, if the throw is vertical a locking device shall be provided to ensure that the blades remain in the open position when so set.

(d) *Switchboards and panelboards.* Switchboards that have any exposed live parts shall be located in permanently dry locations and accessible only to qualified persons. Panelboards shall be mounted in cabinets, cutout boxes, or enclosures approved for the purpose and shall be dead front. However, panelboards other than the dead front externally-operable type are permitted where accessible only to qualified persons. Exposed blades of knife switched shall be dead when open.

(e) *Enclosures for damp or wet locations.* (1) Cabinets, cutout boxes, fittings, boxes, and panelboard enclosures in damp or wet locations shall be installed so as to prevent mositure or water from entering and accumulating within the enclosures. In wet locations the enclosures shall be weatherproof.

(2) Switches, circuit breakers, and switchboards installed in wet locations shall be enclosed in weather proof enclosures.

(f) *Conductors for general wiring.* All conductors used for general wiring shall be insulated unless otherwise permitted in this Subpart. The conductor insulation shall be of a type that is approved for the voltage, operating temperature, and location of use. Insulated conductors shall be distinguishable by appropriate color or other means as being grounded conductors, ungrounded conductors, or equipment grounding conductors.

(g) *Flexible cords and cables*—(1) *Use of flexible cords and cables.* (i) Flexible cords and cables shall be approved for conditions of use and location. Flexible cords and cables shall be used only for:

(A) Pendants;

(B) Wiring of fixtures;

(C) Connection of portable lamps or appliances;

(D) Elevator cables;

(E) Wiring of cranes and hoists;

(F) Connection of stationary equipment to facilitate their frequent interchange;

(G) Prevention of the transmission of noise or vibration; or

(H) Appliances where the fastening means and mechanical connections are designed to permit removal for maintenance and repair.

(ii) If used as permitted in paragraphs (g)(1)(i)(C), (g)(1)(i)(F), or (g)(1)(i)(H) of this section, the flexible cord shall be equipped with an attachment plug and shall be energized from a receptacle outlet.

(iii) Unless specifically permitted in paragraph (g)(1)(i) of this section, flexible cords and cables shall not be used:

(A) As a substitute for the fixed wiring of a structure;

(B) Where run through holes in walls, ceilings, or floors;

(C) Where run through doorways, windows, or similar openings;

(D) Where attached to building surfaces; or

(E) Where concealed behind building walls, ceilings, or floors.

(2) *Identification, splices, and terminations.* (i) A conductor of a flexible cord or cable that is used as a grounded conductor or an equipment grounding conductor shall be distinguishable from other conductors. Types SJ, SJO, SJT, SJTO, S, SO, ST, and STO shall be durably marked on the surface with the type designation, size, and number of conductors.

(ii) Flexible cords shall be used only in continuous lengths without splice or tap. Hard service flexible cords No. 12 or larger may be repaired if spliced so that the splice retains the insulation, outer sheath properties, and usage characteristics of the cord being spliced.

(iii) Flexible cords shall be connected to devices and fittings so that strain relief is provide which will prevent pull from being directly transmitted to joints or terminal screws.

(iv) Flexible cords and cables shall be protected by bushings or fittings where passing through holes in covers, outlet boxes, or similar enclosures.

(h) *Portable cables over 600 volts, nominal.* Multiconductor portable cable for use in supplying power to portable or mobile equipment at over 600 volts, nominal, shall consist of No. 8 or larger conductors employing flexible stranding. Cables operated at over 2000 volts shall be shielded for the purpose of confining the voltage stresses to the insulation. Grounding conductors shall be provided. Connectors for these cables shall be of a locking type with provisions to prevent their opening or closing while energized. Strain relief shall be provided at connections and terminations. Portable cables shall not be operated with splices unless the splices are of the permanent molded, vulcanized, or other approved type. Termination enclosures shall be marked with a high voltage hazard warning, and terminations shall be accessible only to authorized and qualified personnel.

(i) *Fixture wires*—(1) *General.* Fixture wires shall be approved for the voltage, temperature, and location of use. A fixture wire which is used as a grounded conductor shall be identified.

(2) *Uses permitted.* Fixture wires may be used:

(i) For installation in lighting fixtures and in similar equipment where enclosed or protected and not subject to bending or twisting in use; or

(ii) For connecting lighting fixtures to the branch-circuit conductors supplying the fixtures.

(3) *Uses not permitted.* Fixture wires shall not be used as branch-circuit conductors except as permitted for Class 1 power-limited circuits.

(j) *Equipment for general use*— (1) *Lighting fixtures, lampholders, lamps, and receptacles.* (1) Fixtures, lampholders, lamps, rosettes, and receptacles shall have no live parts normally exposed to employee contact. However, rosettes and cleat-tpye lampholders and receptacles located at least 8 feet (2.44 m) above the floor may have exposed parts.

(ii) Fixtures, lampholders, rosettes, and receptacles shall be securely supported. A fixture that weighs more than 6 pounds (2.72 kg) or exceeds 16 inches (406 mm) in any dimension shall not be supported by the screw shell of a lampholder.

(iii) Portable lamps shall be wired with flexible cord and an attachment plug of the polarized or grounding type. When used with Edison-based lampholders, the grounded conductors shall be identified and attached to the screw shell and the identified blade of the attachment plug. In addition portable handlamps shall comply with the following:

(A) Metal shell, paperlined lampholders shall not be used;

(B) Handlamps shall be equipped with a handle of molded composition or other insulating material;

(C) Handlamps shall be equipped with a substantial guard attached to the lampholder or handler;

(D) Metallic guards shall be grounded by the means of an equipment ground conductor run within the power supply cord.

(iv) Lampholders of the screw-shell type shall be installed for use as lampholders only. Lampholders installed in wet or damp locations shall be of the weatherproof type.

(v) Fixtures installed in wet or damp locations shall be approved for the purpose and shall be so constructed or installed that water cannot enter or accumulate in wireways, lampholders, or other electrical parts.

(2) *Receptacles, cord connectors, and attachment plugs (caps).* (i) Receptacles, cord connectors, and attachment plugs shall be constructed so that no receptacle or cord connector will accept an attachment plug with a different voltage or current rating than that for which the device is intended. However, a 20-ampere T-slot receptacle or cord connector may accept a 15-ampere attachment plug of the same voltage rating. Receptacles connected to circuits having different voltages, frequencies, or types of current (ac or dc) on the same premises shall be of such design that the attachment plugs used on these circuits are not interchangeable.

(ii) A receptacle installed in a wet or damp location shall be designed for the location.

(3) *Appliances.* (i) Appliances, other than those in which the currentcarrying parts at high temperatures are necessarily exposed, shall have no live parts normally exposed to employee contact.

(ii) A means shall be provided to disconnect each appliance.

(iii) Each appliance shall be marked with its rating in volts and amperes or volts and watts.

(4) *Motors.* This paragraph applies to motors, circuits, and controllers.

(i) *In sight from.* If specified that one piece of equipment shall be "in sight from" another piece of equipment, one shall be visible and not more than 50 feet (15.2 m) from the other.

(ii) *Disconnecting means.* (A) disconnecting means shall be located in sight from the controller location. The controller disconnecting means for motor branch circuits over 600 volts, nominal, may be out of sight of the controller, if the controller is marked with a warning label giving the location and identification of the disconnecting means which is to be locked in the open position.

(B) The disconnecting means shall disconnect the motor and the controller from all ungrounded supply conductors and shall be so designed that no pole can be operated independently.

(C) If a motor and the driven machinery are not in sight from the controller location, the installation shall comply with one of the following conditions:

(*1*) The controller disconnecting means shall be capable of being locked in the open position.

(*2*) A manually operable switch that will disconnect the motor from its source of supply shall be placed in sight from the motor location.

(D) The disconnecting means shall plainly indicate whether it is in the open (off) or closed (on) position.

(E) The disconnecting means shall be readily accessible. If more than one disconnect is provided for the same equipment, only one need be readily accessible

(F) An individual disconnecting means shall be provided for each motor, but a single disconnecting means may be used for a group of motors under any one of the following conditions:

(*1*) If a number of motors drive special parts of a single machine or piece of apparatus, such as a metal or woodworking machine, crane, or hoist;

(*2*) If a group of motors is under the protection of one set for branch-circuit protective devices; or

(*3*) If a group of motors is in a single room in sight from the location of the disconnecting means.

(iii) *Motor overload, short-circuit, and ground-fault protection.* Motors, motor-control apparatus, and motor branch-circuit conductors shall be protected against overheating due to motor overloads or failure to start, and against short-circuits or ground faults. These provisions do not require overload protection that will stop a motor where a shutdown is likely to introduce additional or increased hazards, as in the case of fire pumps, or where continued operation of a motor is necessary for a safe shutdown of equipment or process and motor overload sensing devices are connected to a supervised alarm.

(iv) *Protection of live parts—all voltages.* (A) Stationary motors having commutators, collectors, and brush rigging located inside of motor end brackets and not conductively connected to supply circuits operating at more than 150 volts to ground need not have such parts guarded. Exposed live parts of motors and controllers operating at 50 volts or more between terminals shall be guarded against accidental contact by any of the following:

(*1*) By installation in a room or enclosure that is accessible only to qualified persons;

(*2*) By installation on a balcony, gallery, or platform, so elevated and arranged as to exclude unqualified persons; or

(*3*) By elevation 8 feet (2.44 m) or more above the floor.

(*B*) Where live parts of motors or controllers operating at over 150 volts to ground are guarded against accidental contact only by location, and where adjustment or other attendance may be necessary during the operation of the apparatus, insulting mats or platforms shall be provided so that the attendant cannot readily touch live parts unless standing on the mats or platforms.

(5) *Transformers.* (i) The following paragraphs cover the installation of all transformers except the following:

(*A*) Current transformers;

(*B*) Dry-type transformers installed as a component part of other apparatus;

(*C*) Transformers which are an integral part of an X-ray, high frequency, or electrostatic-coating apparatus;

(*D*) Transformers used with Class 2 and Class 3 circuits, sign and outline lighting, electric discharge lighting, and power-limited fire-protective signaling circuits.

(ii) The operating voltage of exposed live parts of transformer installations shall be indicated by warning signs or visable markings on the equipment or structure.

(iii) Dry-type, high fire point liquid-insulated, and askarel-insulated transformers installed indoors and rated over 35kV shall be in a vault.

(iv) If they present a fire hazard to employees, oil-insulated transformers installed indoors shall be in a vault.

(v) Combustible material, combustible buildings and parts of buildings, fire escapes, and door and window openings shall be safeguarded from fires which may originate in oil-insulated transformers attached to or adjacent to a building or combustible material.

(vi) Transformer vaults shall be constructed so as to contain fire and combustible liquids within the vault and to prevent unauthorized access. Locks and latches shall be so arranged that a vault door can be readily opened from the inside.

(vii) Any pipe or duct system foreign to the vault installation shall not enter or pass through a transformer vault.

(viii) Materials shall not be stored in transformer vaults.

(6) *Capacitors.* (i) All capacitors, except surge capacitors or capacitors included as a component part of other apparatus, shall be provided with an automatic means of draining the stored charge and maintaining the discharged state after the capacitor is disconnected from its source of supply.

(ii) Capacitors rated over 600 volts, nominal, shall comply with the following additional requirements:

(*A*) Isolating or disconnecting switches (with no interrupting rating) shall be interlocked with the load interrupting device or shall be provided with prominently displayed caution signs to prevent switching load current.

(*B*) For series capacitors the proper switching shall be assured by use of at least one of the following:

(*1*) Mechanically sequenced isolating and bypass switches,

(*2*) Interlocks, or

(3) Switching procedure prominently displayed at the switching location.

§ 1926.406 Specific purpose equipment and installations.

(a) *Cranes and hoist.* This paragraph applies to the installation of electric equipment and wiring used in connection with cranes, monorail hoists, hoists, and all runways.

(1) *Disconnecting means.* (i) A readily accessible disconnecting means shall be provided between the runway contact conductors and the power supply.

(ii) Another disconnecting means, capable of being locked in the open position, shall be provided in the leads from the runway contact conductors or other power supply on any crane or monorail hoist.

(*A*) If this additional disconnecting means is not readily accessible from the crane or monorail hoist operating station, means shall be provided at the operating station to open the power circuit to all motors of the crane or monorail hoist.

(*B*) The additional disconnect may be omitted if a monorail hoist or hand-propelled crane bridge installation meets all of the following:

(*1*) The unit is floor controlled;

(*2*) The unit is within view of the power supply disconnecting means; and

(*3*) No fixed work platform has been provided for servicing the unit.

(iii) The continuous ampere rating of the switch or circuit breaker required by paragraphs (a)(1)(i) and (a)(1)(ii) of this section shall not be less than 50 percent of the combined short-time ampere rating of the motors, nor less than 75 percent of the sum of the short-time ampere rating of the motors required for any single motion.

(2) *Control.* A limit switch or other device shall be provided to prevent the load block from passing the safe upper limit of travel of any hoisting mechanism to protect against motor overcurrent conditions.

(3) *Clearance.* The dimension of the working space in the direction of access to live parts which may require examination, adjustment, servicing, or maintenance while alive shall be a minimum of 2 feet 6 inches (762 mm). Where controls are enclosed in cabinets, the door(s) shall either open at least 90 degrees or be removable.

(4) *Grounding.* All exposed metal parts of cranes, monorail hoists, hoists and accessories including pendant controls shall be metallically joined together into a continuous electrical conductor so that the entire crane or hoist will be gounded in accordance with §1926.404(f). Moving parts, other than removable accessories or attachments, having metal-to-metal bearing surfaces shall be considered to be electrically connected to each other through the bearing surfaces for grounding purposes. The trolley frame and bridge frame shall be considered as electrically grounded through the bridge and trolley wheels and its respective tracks unless local conditions, such as paint or other insulating materials, prevent reliable metal-to-metal contact. In this case a separate bonding conductor shall be provided.

(b) *Elevators, escalators and moving walks*—(1) *Disconnecting means.* Elevators, escalators, and moving walks shall have a single means for disconnecting all unground main power supply conductors for each unit.

(2) *Control panels.* If control panels are not located in the same space as the drive machine, they shall be located in cabinets with doors or panels capable of being locked closed.

(c) *Electric welders-disconnecting means.* (1) A disconnecting means shall be provided in the supply circuit for each motor-generator arc welder, and for each AC transformer and DC rectifier arc welder which is not equipped with a disconnect mounted as an intergral part of the welder.

(2) A switch or circuit breaker shall be provided by which each resistance welder and its control equipment can be isolated from the supply circuit. The ampere rating of this disconnecting means shall not be less than the supply conductor ampacity.

(d) *X-Ray equipment*—(1) *Disconnecting means.* (i) A disconnecting means shall be provided in the supply circuit. The disconnecting means shall be operable from a location readily accessible from the X-ray control. For equipment connected to a 120-volt branch circuit of 30 amperes or less, a grounding-type attachment plug cap and receptacle of proper rating may serve as a disconnecting means.

(ii) If more than one piece of equipment is operated from the same high-voltage circuit, each piece or each group of equipment as a unit shall be provided with a high-voltage switch or equivalent disconnecting means. This disconnecting means shall be constructed, enclosed, or located so as to avoid contact by employees with its live parts.

(2) *Control: Radiographic and fluoroscopic types.* Radiographic and fluoroscopic-type equipment shall be effectively enclosed or shall have interlocks that deenergize the equipment automatically to prevent ready access to live current-carrying parts.

§ 1926.407 Hazardous (classified) locations.

(a) *Scope.* This section sets forth requirements for electric equipment and wiring in locations which are classified depending on the properties of the flammable vapors, liquids or gases, or combustible dusts or fibers which may be present therein and the likelihood that a flammable or combustible concentration or quantity is present. Each room, section or area shall be considered individually in determining its classification. These hazardous (classified) locations are assigned six designations as follows:

Class I, Division 1; Class I, Division 2; Class II, Division 1; Class II, Division 2; Class III, Division 1; and Class III, Division 2.

For definitions of these locations see § 1926.449. All applicable requirements in this subpart apply to all hazardous (clasifed) locatons, unless modified by provisions of this section.

(b) *Electrical Installations.* Equipment, wiring methods, and installations of equipment in hazardous (classified) locations shall be intrinsically safe or approved for the hazardous (classified) location or safe for the hazardous (classified) location. Requirements for each of these options are as follows:

(1) *Intrinsically safe.* Equipment and associated wiring approved as intrinsically safe is permitted in any hazardous (classified) location for which it is approved.

(2) *Approved for the hazardous (classified) location.* Equipment shall be appoved not only for the class of location but also for the ignitible or combustible properties of the specific gas, vapor, dust, or fiber that will be present.

Note.—NFPA 70, the National Electrical Code, lists or defines hazardous gases, vapors, and dusts by "Groups" characterized by their ignitible or combustible properties.

(ii) Equipment shall be marked to show the class, group, and operating temperature or temperature range, based on operation in a 40–degree C ambient, for which it is approved. The temperature marking shall not exceed the ignition temperture of the specific gas or vapor to be encountered. However, the following provisions modify this marking requirement for specific equipment:

(A) Equipment of the non-heat producing type (lsuch as junction boxes, conduit, and fittings) and equipment of the heat-producing type having a maximum temperature not more than 100 ldegrees C (212 degrees F) need not

have a marked operating temperature or temperature range.

(b) Fixed lighting fixtures marked for use in Class I, Division 2 locations only, need not be marked to indicate the group.

(c) Fixed general-purpose equipment in Class I locations, other than lighting fixtures, which is acceptable for use in Class I, Division 2 locations need not be marked with the class, group, division, or operating temperature.

(d) Fixed dust-tight equipment, other than lighting fixtures, which is acceptable for use in Class II, Division 2 Class III locations need not be marked with the class, group, division, or operating temperature.

(3) *Safe for the hazardous (classified) location.* Equipment whichis safe for the location shall be of a type and design which the employer demonstrates will provide protection from the hazards arising from the combustibility and flammability of vapors, liquids, gases, dusts, or fibers.

Note:—The National Electrical Code, NFPA 70, contains guidelines for determining the type and design of equipment and installation which will meet this requiremnt. the guidelines of this document address electric wiring, equipment, and systems installed in hazardous (classified) locations and contain specific provisions for the following: wiring methods, Wiring connections, conductor insulation, flexible cords, sealing and drainage, transformers, capacitors, switches, circuit breakers, fuses, mnotor controllers, receptacles, attachment plugs, meters, relays, instruments, resistors, generators, motors, lighting fixtures, storage battery charging equipment, electric carane, electric hoists and similar equipment, utilization equipment, signaling systems, alarm system, remote control systems, local loud speaker and communicatin systemsd, ventilation piping, live parts, lightning surge protgection, and grounding. Compliance with these guidelines will constitute one mean, but not the only means, of compliance with this paragraph.

(c) *Conduits.* All conduits shall be threaded and shall be made wrenchtight. Where it is impractical to make a threaded joint tight, a bonding jumper shall be utilized.

§ 1926.408 Special systems.

(a) *Systems over 600 volts, nominal.* Paragraphs (a) (1) through (4) of this seciton cover the general requirements for all circuits and equipment operated at over 600 volts.

(1) *Wiring methods for fixed installations.* (i) Above-ground conductors shall be installed in rigid metal conduit, in intermediate metal conduit, in cable trays, incablebus, in other suitable raceways, or as open runs of metal-clad cable designed for the use and purpose. However, open runs of non-metallic-sheathed cable or of bare coanductors or busbars may be installecd in location accessible only to qualified person. Metallic shileding components, such as tapes, wires, or braids for conductors, shall be grounded. Open runs of insualted wires and cables haviang bare lead sheath or a braided outer coavering shall be supported in a manner designed to prevent physical damage to the braid or sheath.

(ii) Conductor emerging form the ground shall be enclosed in raceways. Raceways installed on poles shall be of rigid metal conduit, intermediate metal conduit, PVC schedule 80 or equivalent extendig from the ground line up to a point 8 feet (2.44 m)above finished grade. Conductors entering a building shall be protected by an enclosure from the ground line to the point of entrance. Metallic enclosure shall be grounded.

(2) *Interrupting and isolating devices.*

(i) Circuit breakers located indoors shall consist of metal-enclosed or fire-resistant, cell-mounted units. In locations accessible only to qualified personnel, open mounting of circuit breakers is permitted. A means of indicating the open and close position of circuit breakers shal be provided.

(ii) Fused coutouts installed in buildings or transformer vaults shall be of a type approved for the purpose. They shall be readly accessible for fuse replacement.

(iii) A means shall be provided to completely isolate equipment for inspection and repairs. Isolating means which are not designed to interrupt the load current of the circuit shall be either interlocked with a circuit interruptrer or provided with a sign warning against opening them under load.

(3) *Mobile and portable equipment* —(i) *Power cable connections to mobile machines.* A metallic enclosure shall be provided on the mobile machine for enclosing the terminals of the power cable. the enclosure shall include provisions for a solid connection for the ground wire(s) terminal to ground effectively the machine frame. The method of cable termination used shall prevent any strain or pull on the cable from stressing the electrical connections. The enclosure shall have provision for locking so only authorized qualified persons may open it and shall be marked with a sign warning of the presence of energized parts.

(ii) *Guarding live parts.* All energized switching and control parts shall be enclosed in effectively grounded metal cabinets or enclosures. Circuit breakers and protective equipment shall have the operating means projecting through the metal cabinet or enclosure so these units can be reset without locked doors being opened. Enclosures and metal cabinets shall be locked so that only authorized qualified persons have access and shall be marked with a sign warning of the presence of energized parts. Collector ring assemblies on revolving-type machines (shovels, draglines, etc.) shall be guarded.

(4) *Tunnel installation*—(i) *Application.* The provisions of this paragraph apply to installation and use of high-voltage power distribution and utilization equipment which is associated with tunnels and which is portable and/or mobile, such as substations, trailers, cars, mobile shovels, draglines, hoists, drills, dredges, compressors, pumps, conveyors, and underground excavators.

(ii) *Conductors.* Conductors in tunnels shall be installed in one or more of the following:

(A) Metal conduit or other metal raceway,

(B) Type MC cable, or

(C) Other approved multiconductor cable.

Conductors shall also be so located or guarded as to protect them from physical damage. Multiconductor portable cable may supply mobile equipment. An equipment grounding conductor shall be run with circuit conductors inside the metal raceway or inside the multiconductor cable jacket. The equipment grounding conductor may be insulated or bare.

(iii) *Guarding live parts.* Bare terminals of transformers, switches, motor controllers, and other equipment shall be enclosed to prevent accidental contact with energized parts. Enclosures for use in tunnels shall be drip-proof, weatherproof, or submersible as required by the environmental conditions.

(iv) *Disconnecting means.* A disconnecting means that simultaneously opens all ungrounded conductors shall be installed at each transformer or motor location.

(v) *Grounding and bonding.* All nonenergized metal parts of electric equipment and metal raceways and cable sheaths shall be grounded and bonded to all metal pipes and rails at the portal and at intervals not exceeding 1000 feet (305 m) throughout the tunnel.

(b) *Class 1, Class 2, and Class 3 remote control, signaling, and power-limited circuits*—(1) *Classification.* Class 1, Class 2, or Class 3 remote control, signaling, or power-limited circuits are characterized by their usage and electrical power limitation which differentiates them from light and power circuits. These circuits are classified in

accordance with their respective voltage and power limitations as summarized in paragraphs (b)(1) (i) through (iii) of this section.

(i) *Class 1 circuits.* (A) A Class 1 power-limited circuit is supplied from a source having a rated output of not more than 30 volts and 1000 volt-amperes.

(B) A Class 1 remote control circuit or a Class 1 signaling circuit has a voltage which does not exceed 600 volts; however, the power output of the source need not be limited.

(ii) *Class 2 and Class 3 circuits.* (A) Power for Class 2 and Class 3 circuits is limited either inherently (in which no overcurrent protection is required) or by a combination of a power source and overcurrent protection.

(B) The maximum circuit voltage is 150 volts AC of DC for a CLass 2 inherently limited power source, and 100 volts AC or DC for a Class 3 inherently limited power source.

(C) The maximum circuit voltage is 30 volts AC and 60 volts DC for a Class 2 power source limited by overcurrent protection, and 150 volts AC or DC for a Class 3 power source limited by overcurrent protection.

(iii) The maximum circuit voltages in paragraph (b)(1) (i) and (ii) of this section apply to sinusoidal AC or continuous DC power sources, and where wet contact occurrence is not likely.

(2) *Marking.* A Class 2 or Class 3 power supply unit shall be durably marked where plainly visible to indicate the class of supply and its electrical rating.

(c) *Communications systems*—(1) *Scope.* These provisions for communication systems apply to such systems as central-station-connected and non-central-station-connected telephone circuits, radio receiving and transmitting equipment, and outside wiring for fire and burglar alarm, and similar central station systems. These installations need not comply with the provisions of §§ 1926.403 through 1926.408(b), except § 1926.404(c)1)(ii) and § 1926.407.

(2) *Protective devices.* (i) Communication circuits so located as to be exposed to accidental contact with light or power conductors operating at over 300 volts shall have each circuit so exposed provided with an approved protector.

(ii) Each conductor of a lead-in from an outdooor antenna shall be provided with an antenna discharge unit or other means that will drain static charges from the antenna system.

(3) *Conductor location*—(i) *Outside of buildings.* (A) Receiving distribution lead-in or aerial-drop cables attached to buildings and lead-in conductors to radio transmitters shall be so installed as to avoid the possibility of accidental contact with electric light or power conductors.

(B) The clearance between lead-in conductors and any lighting protection conductors shall not be less that 6 feet (1.83 m).

(ii) *On poles.* Where practicable, communication conductors on poles shall be located below the light or power conductors. Communications conductors shall not be attached to a crossarm that carriers light or power conductors.

(iii) *Inside of buildings.* Indoor antennas, lead-ins, and other communication conductors attached as open conductors to the inside of buildings shall be located at least 2 inches (50.8 mm) from conductors of any light or power or Class 1 circuits unless a special and equally protective method of approved conductor separation is employed.

(4) *Equipment location.* Outdoor metal structures supporting antennas, as well as self-supporting antennas such as vertical rods or dipole structures, shall be located as far away from overhead conductors of electric light and power circuits of over 150 volts to ground as necessary to avoid the possibility of the antenna or structure falling into or making accidental contact with such circuits.

(5) *Grounding*—(i) *Lead-in conductors.* If exposed to contact with electric light and power conductors, the metal sheath of aerial cables entering buildings shall be grounded or shall be interrupted close to the entrance to the building by an insulating joint or equivalent device. Where protective devices are used, they shall be grounded in an approved manner.

(ii) *Antenna structures.* Masts and metal structures supporting antennas shall be permanently and effectively grounded without splice or connection in the grounding conductor.

(iii) *Equipment enclosures.* Transmitters shall be enclosed in a metal frame or grill or separated from the operating space by a barrier, all metallic parts of which are effectively connected to ground. All external metal handles and controls accessible to the operating personnel shall be effectively grounded. Unpowered equipment and enclosures shall be considered grounded where connected to an atttached coaxial cable with an effectively grounded metallic shield.

§§ 1926.409–1926.415 [Reserved]

Safety-Related Work Practices

§ 1926.416 General requirements.

(a) *Protection of employees.* (1) No employer shall permit an employee to work in such proximity to any part of an electric power circuit that the employee could contact the electric power circuit in the course of work, unless the employee is protected against electric shock by deenergizing the circuit and grounding it or by guarding it by effective insulation or other means.

(2) In work areas where the exact location of underground electric powerlines is unknown, employees using jack-hammers, bars, or other hand tools which may contact a line shall be provide with insulated protective gloves.

(3) Before work is begun the employer shall ascertain by inquiry or direct observation, or by instruments, whether any part of an electric power circuit, exposed or concealed, is so located that the performance of the work may bring any person, tool, or machine into physical or electrical contact with the electric power circuit. The employer shall post and maintain proper warning signs where such a circuit exists. The employer shall advise employees of the location of such lines, the hazards involved, and the protective measures to be taken.

(b) *Passageways and open spaces.* (1) Barriers or other means of guarding shall be provided to ensure that workspace for electrical equipment will not be used as a passageway during periods when energized parts of electrical equipment are exposed.

(2) Working spaces, walkways, and similar locations shall be kept clear of cords so as not to create a hazard to employees.

(c) *Load ratings.* In existing installations no changes in circuit protection shall be made to increase the load in excess of the load rating of the circuit wiring.

(d) *Fuses.* When fuses are installed or removed with one or both terminals energized, special tools insulated for the voltage shall be used.

(e) *Cords and cables.* (1) Worn or frayed electric cords or cables shall not be used.

(2) Extension cords shall not be fstened with staples, hung from nails, or suspended by wire.

§ 1926.417 Lockout and tagging of circuits.

(a) *Controls.* Controls that are to be deactivated during the course or work on energized or deenergized equipment or circuits shall be tagged.

(b) *Equipment and circuits.* Equipment or circuits that are deenergized shall be rendered inoperative and shall have tages attached at all points where such equipment or circuits can be energized.

(c) *Tags.* Tags shall be placed to identify plainly the equipment or circuits being worked on.

§§ 1926.418–1926.430 [Reserved]

Safety-Related Maintenance and Environmental Considerations

§ 1926.431 Maintenance of equipment.

Equipment in hazardous locations. The employer shall ensure that all wiring components and utilization equipment in hazardous locations are maintained in a dust-tight, dust-ignition-proof, or explosion-proof condition in accordance with their approvals. There shall be no loose or missing screws, gaskets, threaded connections, seals, or other impairments to a tight condition.

§ 1926.432 Enviromental deterioration of equipment.

(a) *Deteriorating agents.* (1) Unless approved for the purpose, no conductors or equipment shall be located:

(i) In damp or wet locations;

(ii) Where exposed to gases, fumes, vapors, liquids, or other agents having a deteriorating effect on the conductors or equipment; nor

(iii) Where exposed to excessive temperatures.

(2) Control equipment, utilization equipment, and busways approved for use in dry locations only shall be protected against permanent damage from the weather during building construction.

(b) *Protection against corrosion.* Metal raceways, cable armor, boxes, cable sheathing, cabinets, elbows, couplings, fittings, supports, and support hardware shall be of materials appropriate for the environment in which they are to be installed.

§§ 1926.433–1926.440 [Reserved]

Safety Requirements for Special Equipment

§ 1926.441 Batteries and battery charging.

(a) *General requirements.* (1) Batteries of the unsealed type shall be located in enclosures with outside vents or in well ventilated rooms and shall be arranged so as to prevent the escape of fumes, gases, or electrolyte spray into other areas.

(2) Ventilation shall be provided to ensure diffusion of the gases from the battery and to prevent the accumulation of an explosive mixture.

(3) Racks and trays shall be substantial and shall be treated to make them resistant to the electrolyte.

(4) Floors shall be of acid resistant construction unless protected from acid accumulations.

(5) Face shields, aprons, and rubber gloves shall be provided for workers handling acids or batteries.

(6) Facilities for quick drenching of the eyes and body shall be provided within 25 feet (7.62 m) of battery handling areas.

(7) Facilities shall be provided for flushing and neutralizing spiled electrolyte and for fire protection.

(b) *Charging.* (1) Battery charging installations shall be located in areas designated for that purpose.

(2) Charging apparatus shall be protected from damage by trucks.

(3) When batteries are being charged, the vent caps shall be kept in place to avoid electrolyte spray. Vent caps shall be maintained in functioning condition.

§§ 1926.442–1926.448 [Reserved]

Definitions

§ 1926.449 Definitions applicable to this subpart.

The definitions given in this section apply to the terms used in this subpart. The definitions given here for "approved" and "qualified person" apply, instead of the definitions given in § 1926.32, to the use of these terms in this subpart.

Acceptable. An installation or equipment is acceptable to the Assistant Secretary of Labor, and approved within the meaning of this Subpart K:

(i) If it is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a qualified testing laboratory capable of determining the suitability of materials and equipment for installation and use in accordance with this standard; or

(ii) With respect to an installation or equipment of a kind which no qualified testing laboratory accepts, certifies, lists, labels, or determines to be safe, if it is inspected or tested by another Federal agency, or by a State, municipal, or other local authority responsible for enforcing occupational safety provisions of, and found in compliance with, the National Electrical Code; or

(iii) With respect to custom-made equipment or related installations which are designed, fabricated for, and intended for use by a particular customer, if it is detemined to be safe for its intended use by its manufacturer on the basis of test data which the employer keeps and makes available for inspection to the Assistant Secretary and his authorized representatives.

Accepted. An installation is "accepted" if it has been inspected and found to be safe by a qualified testing laboratory.

Accessible. (As applied to wiring methods.) Capable of being removed or exposed without damaging the building structure or finish, or not permanently closed in by the structure or finish of the building. (See *"concealed"* and *"exposed."*)

Accessible. (As applied to equipment.) Permitting close approach; not guarded by locked doors, elevation, or other effective means. (See *"Readily accessible."*)

Ampacity. Current-carrying capacity of electric conductors expressed in amperes.

Appliances. Utilization equipment, generally other than industrial, normally built in standardized sizes or types, which is installed or connected as a unit to perform one or more functions.

Approved. Acceptable to the authority enforcing this subpart. The authority enforcing this subpart is the Assistant Secretary of Labor for Occupational Safety and Health. The definition of "acceptable" indicates what is acceptable to the Assistant Secretary of Labor, and therefore approved within the meaning of this subpart.

Askarel. A generic term for a group of nonflammable synthetic chlorinated hydrocarbons used as electrical insulating media. Askarels of various compositional types are used. Under arcing conditions the gases produced, while consisting predominantly of noncombustible hydrogen chloride, can include varying amounts of combustible gases depending upon the askarel type.

Attachment plug (Plug cap)(Cap). A device which, by insertion in a receptacle, establishes connection between the conductors of the attached flexible cord and the conductors connected permanently to the receptacle.

Automatic. Self-acting, operating by its own mechanism when actuated by some influence, such as a change in current strength, pressure, temperature, or mechanical configuration.

Bare conductor. See *"Conductor."*

Bonding. The permanent joining of metallic parts to form an electrically conductive path which will assure electrical continuity and the capacity to conduct safely any current likely to be imposed.

Bonding jumper. A reliable conductor to assure the required electrical conductivity between metal parts required to be electrically connected.

Branch circuit. The circuit conductors between the final over-current device protecting the circuit and the outlet(s).

Building. A structure which stands alone or which is cut off from adjoining structures by fire walls with all openings therein protected by approved fire doors.

Cabinet. An enclosure designed either for surface or flush mounting, and provided with a frame, mat, or trim in which a swinging door or doors are or may be hung.

Certified. Equipment is "certified" if it: (a) Has been tested and found by a qualified testing laboratory to meet applicable test standards or to be safe for use in a specified manner, or (b) is of a kind whose production is periodically inspected by a qualified testing laboratory. Certified equipment must bear a label, tag, or other record of certification.

Circuit breaker. (i) (600 volts nomimal, or less). A device designed to open and close a circuit by nonautomatic means and to open the circuit automatically on a predetermined overcurrent without injury to itself when properly applied within its rating.

(ii) (Over 600 volts, nominal). A switching device capable of making, carrying, and breaking currents under normal circuit conditions, and also making, carrying for a specified time, and breaking currents under specified abnormal circuit conditions, such as those of short circuit.

Class I locations. Class I locations are those in which flammable gases or vapors are or may be present in the air in quantities sufficient to produce explosive or ignitible mixtures. Class I locations include the following.

(i) *Class I, Division 1.* A Class I, Division 1 location is a location: (A) In which ignitible concentrations of flammable gases or vapors may exist under normal operating conditions; or (B) in which ignitible concentrations of such gases or vapors may exist frequently because of repair or maintenance operations or because of leakage; or (C) in which breakdown or faulty operation of equipment or processes might release ignitible concentrations of flammable gases or vapors, and might also cause simultaneous failure of electric equipment.

Note.—This classification usually includes locations where volatile flammable liquids or liquefied flammable gases are transferred from one container to another; interiors of spray booths and areas in the vicinity of spraying and painting operations where volatile flammable solvents are used; locations containing open tanks or vats of volatile flammable liquids; drying rooms or compartments for the evaporation of flammable solvents; inadequately ventilated pump room for flammable gas or for volatile flammable liquids; and all other locations where ignitible concentrations of flammable vapors or gases are likely to occur in the course of normal operations.

(ii) *Class I, Division 2.* A Class I, Division 2 location is a location: (A) In which volatile flammable liquids or flammable gases are handled, processed, or used, but in which the hazardous liquids, vapors, or gases will normally be confined within close containers or closed systems from which they can escape only in case of accidental rupture or breakdown of such containers or systems, or in case of abnormal operation of equipment; or (B) in which ignitible concentrations of gases or vapors are normally prevented by positive mechanical ventilation, and which might become hazardous through failure or abnormal operations of the ventilating equipment; or (C) that is adjacent to a Class I, Division 1 location, and to which ignitible concentrations of gases or vapors might occasionally be communicated unless such communication is prevented by adequate positive-pressure ventilation from a source of clean air, and effective safeguards against ventilation failure are provided.

Note.—This classification usually includes locations where volatile flammable liquids or flammable gases or vapors are used, but which would become hazardous only in case of an accident or of some unusual operating condition. The quantity of flammable material that might escape in case of accident, the adequacy of ventilating equipment, the total area involved, and the record of the industry or business with respect to explosions or fires are all factors that merit consideration in determining the classification and extent of each location.

Piping without valves, checks, meters, and similar devices would not ordinarily introduce a hazardous condition even through used for flammable liquids or gases. Locations used for the storage of flammable liquids or of liquefied or compressed gases in sealed containers would not normally be condidered hazardous unless also subject to other hazardous conditions.

Electrical conduits and their associated enclosures separated from process fluids by a single seal or barrier are classed as a Division 2 location if the outside of the conduit and enclosures is a nonhazardous location.

Class II locations. Class II locations are those that are hazardous because of the presence of combustible dust. Class II locations include the following:

(i) *Class II, Division 1.* A Class II, Division 1 location is a location: (A) In which combustible dust is or may be in suspension in the air under normal operating conditions, in quantites sufficient to produce explosive or ignitible mixtures; or (B) where mechanical failure or abnormal operation of machinery or equipment might cause such explosive or ignitible mixtures to be produced, and might also provide a source of ignition through simultaneous failure of electric equipment, operation of protection devices, or from other causes, or (C) in which combustible dusts of an electrically conductive nature may be present.

Note.—Combustible dusts which are electrically nonconductive include dusts produced in the handling and processing of grain and grain products, pulverized sugar and coca, dried egg and milk powders, pulverized spices, starch and pastes, potato and woodflour, oil meal from beans and seed, dried hay, and other organic materials which may produce combustible dusts when processed or handled. Dusts containing magnesium or aluminum are particularly hazardous and the use of extreme caution is necessary to avoid ignition and explosion.

(ii) *Class II, Division 2.* A Class II, Division 2 location is a location in which: (A) Combustible dust will not normally be in suspension in the air in quantities sufficient to produce explosive or ignitible mixtures, and dust accumulations are normally insufficient to interfere with the normal operation of electrical equipment or other apparatus; or (B) dust may be in suspension in the air as a result of infrequent malfunctioning of handling or processing equipment, and dust accumulations resulting therefrom may be ignitible by abnormal operation of failure of electrical equipment or other apparatus.

Note.—This classification includes locations where dangerous concentrations of suspended dust would not be likely but where dust accumulations might form on or in the vicinity of electric equipment.These areas may contain equipment from which appreciable quantities of dust would escape under abnormal operating conditions or be adjacent to a Class II Division 1 location, as described above, into which an explosive or ignitible concentration of dust may be put into suspension under abnormal operating conditions.

Class III locations. Class III locations are those that are hazardous because of the presence of easily ignitible fibers or flyings but in which such fibers or flyings are not likely to be in suspension in the air in quantities sufficient to produce ignitible mixtures. Class III locations include the following:

(i) *Class III, Division 1.* A Class III, Division 1 location is a location in which easily ignitible fibers or materials producing combustible flyings are handled, manufactured, or used.

Note. Easily ignitible fibers and flyings include rayon, cotton (including cotton linters and cotton waste), sisal or henequen, istle, jute, hemp, tow, cocoa fiber, oakum, baled waste kapok, Spanish moss, excelsior, sawdust, woodchips, and other materials of similar nature.

(ii) *Class III, Division 2.* A Class III, Division 2 location is a location in which easily ignitible fibers are stored or handled, except in process of manufacture.

Collector ring. A collector ring is an assembly of slip rings for transferring electrical energy from a stationary to a rotating member.

Concealed. Rendered inaccessible by the structure or finish of the building. Wires in concealed raceways are considered concealed, even though they may become accessible by withdrawing them. (See *"Accessible.* (As applied to wiring methods.)")

Conductor. (i) *Bare.* A conductor having no covering or electrical insulation whatsover.

(ii) *Covered.* A conductor encased within material of composition or thickness that is not recognized as electrical insulation.

(iii) *Insulated.* A conductor encased within material of composition and thickness that is recognized as electrical insulation.

Controller. A device or group of devices that serves to govern, in some predetermined manner, the electric power delivered to the apparatus to which it is connected.

Covered conductor. See *"Conductor."*

Cutout. (Over 600 volts, nominal.) An assembly of a fuse support with either a fuseholder, fuse carrier, or disconnecting blade. The fuseholder or fuse carrier may include a conducting element (fuse link), or may act as the disconnecting blade by the inclusion of a nonfusible member.

Cutout box. An enclosure designed for surface mounting and having swinging doors or covers secured directly to and telescoping with the walls of the box proper. (See *"Cabinet."*)

Damp location. See *"Location."*

Dead front. Without live parts exposed to a person on the operating side of the equipment.

Device. A unit of an electrical system which is intended to carry but not utilize electric energy.

Disconnecting means. A device, or group of devices, or other means by which the conductors of a circuit can be disconnected from their source of supply.

Disconnecting (or Isolating) switch. (Over 600 volts, nominal.) A mechanical switching device used for isolating a circuit or equipment from a source of power.

Dry location. See *"Location."*

Enclosed. Surrounded by a case, housing, fence or walls which will prevent persons from accidentally contacting energized parts.

Enclosure. The case or housing of apparatus, or the fence or walls surrounding an installation to prevent personnel from accidentally contacting energized parts, or to protect the equipment from physical damage.

Equipment. A general term including material, fittings, devices, appliances, fixtures, apparatus, and the like, used as a part of, or in connection with, and electrical installation.

Equipment grounding conductor. See *"Grounding conductor, equipment."*

Explosion-proof apparatus. Apparatus enclosed in a case that is capable of withstanding an explosion of a specified gas or vapor which may occur within it and of preventing the ignition of a specified gas or vapor surrounding the enclosure by sparks, flashes, or explosion of the gas or vapor within, and which operates at such an external temperature that it will not ignite a surrounding flammable atmosphere.

Exposed. (As applied to live parts.) Capable of being inadvertently touched or approached nearer than a safe distance by a person. It is applied to parts not suitably guarded, isolated, or insulated. (See *"Accessible* and *"Concealed."*)

Exposed. (As applied to wiring methods.) On or attached to the surface or behind panels designed to allow access. (See *"Accessible.* (As applied to wiring methods.)")

Exposed. (For the purposes of § 1926.408(d), Communications systems.) Where the circuit is in such a position that in case of failure of supports or insulation, contact with another circuit may result.

Externally operable. Capable of being operated without exposing the operator to contact with live parts.

Feeder. All circuit conductors between the service equipment, or the generator switchboard of an isolated plant, and the final branch-circuit overcurrent device.

Festoon lighting. A string of outdoor lights suspended between two points more than 15 feet (4.57 m) apart.

Fitting. An accessory such as a locknut, bushing, or other part of a wiring system that is intended primarily to perform a mechanical rather than an electrical function.

Fuse. (Over 600 volts, nominal.) An overcurrent protective device with a circuit opening fusible part that is heated and severed by the passage of overcurrent through it. A fuse comprises all the parts that form a unit capable of performing the prescribed functions. It may or may not be the complete device necessary to connect it into an electrical circuit.

Ground. A conducting connection, whether intentional or accidental, between an electrical circuit or equipment and the earth, or to some conducting body that serves in place of the earth.

Grounded. Connected to earth or to some conducting body that serves in place of the earth.

Grounded, effectively. (Over 600 volts, nominal.) Permanently connected to earth through a ground connection of sufficiently low impedance and having sufficient ampacity that ground fault current which may occur cannot build up to voltages dangerous to personnel.

Grounded conductor. A system or circuit conductor that is intentionally grounded.

Grounding conductor. A conductor used to connect equipment or the grounded circuit of a wiring system to a grounding electrode or electrodes.

Grounding conductor, equipment. The conductor used to connect the non-current-carrying metal parts of equipment, raceways, and other enclosures to the system grounded conductor and/or to the grounding electrode conductor at the service equipment or at the source of a separately derived system.

Grounding electrode conductor. The conductor used to connect the grounding electrode to the equipment grounding conductor and/or the grounded conductor of the circuit at the service equipment or at the source of a separately derived system.

Ground-fault circuit interrupter. A device for the protection of personnel that functions to deenergize a circuit or portion thereof within an established period of time when a current to ground exceeds some predetermined value that is less than that required to operate the overcurrent protective device of the supply circuit.

Guarded. Covered, shielded, fenced, enclosed, or otherwise protected by means of suitable covers, casings, barriers, rails, screens, mats, or platforms to remove the likelihood of approach to a point of danger or contact by persons or objects.

Hoistway. Any shaftway, hatchway, well hole, or other vertical opening or space in which an elevator or dumbwaiter is designed to operate.

Identified (As applied to conductors and terminals). Identified, as used in reference to a conductor or its terminal,

means that such conductor or terminal can be recognized as grounded.

Identified (As applied to equipment). Recognized as suitable for the specific purpose, function, use, environment, application, etc. where described as a requirement in this standard. Suitability of equipment for a specific purpose, environment, or application is determined by a qualified testing laboratory where such identification includes labeling or listing.

Insulated conductor. See *"Conductor."*

Interrupter switch. (Over 600 volt, nominal.) A switch capable of making, carrying, and interrupting specified currents.

Intrinsically safe equipment and associated wiring. Equipment and associated wiring in which any spark or thermal effect, produced either normally or in specified fault conditions, is incapable, under certain prescribed test conditions, of causing ignition of a mixture of flammable or combustible material in air in its most easily ignitible concentration.

Isolated. Not readily accessible to persons unless special means for access are used.

Isolated power system. A system comprising an isolating transformer or its equivalent, a line isolation monitor, and its ungrounded circuit conductors.

Labeled. Equipment or materials to which has been attached a label, symbol or other identifying mark of a qualified testing laboratory which indicates compliance with appropriate standards of performance in a specified manner.

Lighting outlet. An outlet intended for the direct connection of a lampholder, a lighting fixture, or a pendant cord terminating in a lamp-holder.

Listed. Equipment or materials included in a list published by a qualified testing laboratory whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

Location. (a) *Damp location.* Partially protected locations under canopies, marquees, roofed open porches, and like locations, and interior locations subject to moderate degrees of moisture.

(b) *Dry location.* A location not normally subject to dampness or wetness. A location classified as dry may be temporarily subject to dampness or wetness, as in the case of a building under construction.

(c) *Wet location.* Installations underground or in concrete slabs or masonry in direct contact with the earth, and locations subject to saturation with water or other liquids, such as locations exposed to weather and unprotected.

Mobile X-ray. X-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled.

Motor control center. An assembly of one or more enclosed sections having a common power bus and principally containing motor control units.

Outlet. A point on the wiring system at which current is taken to supply utilization equipment.

Overcurrent. Any current in excess of the rated current of equipment or the ampacity of a conductor. It may result from overload (see definition), short circuit, or ground fault. A current in excess of rating may be accommodated by certain equipment and conductors for a given set of conditions. Hence the rules for overcurrent protection are specific for particular situations.

Overload. Operation of equipment in excess of normal, full load rating, or of a conductor in excess of rated ampacity which, when it persists for a sufficient length of time, would cause damage or dangerous overheating. A fault, such as a short circuit or ground fault, is not an overload. (See *"Overcurrent."*)

Panelboard. A single panel or group of panel units designed for assembly in the form of a single panel; including buses, automatic over-current devices, and with or without switches for the control of light, heat, or power circuits; designed to be placed in a cabinet or cutout box placed in or against a wall or partition and accessible only from the front. (See *"Switchboard."*)

Portable X-ray. X-ray equipment designed to be hand-carried.

Power fuse. (Over 600 volts, nominal) See "Fuse."

Power outlet. An enclosed assembly which may include receptacles, circuit breakers, fuseholders, fused switches, buses and watt-hour meter mounting means; intended to serve as a means for distributing power required to operate mobile or temporarily installed equipment.

Premises wiring system. That interior and exterior wiring, including power, lighting, control, and signal circuit wiring together with all of its associated hardware, fittings, and wiring devices, both permanently and temporarily installed, which extends from the load end of the service drop, or load end of the service lateral conductors to the outlet(s). Such wiring does not include wiring internal to appliances, fixtures, motors, controllers, motor control centers, and similar equipment.

Qualified person. One familiar with the construction and operation of the equipment and the hazards involved.

Qualified test laboratory. A properly equipped and staffed testing laboratory recognized by the Assistant Secretary of Labor which has capabilities for and provides the following services: (a) Experimental testing for safety of specified items of equipment and materials referred to in this standard to determine compliance with appropriate test standards or performance in a specified manner; (b) inspecting the run of such items of equipment and materials at factories for product evaluation to assure compliance with the test standards; (c) service-value determinations through field inspections to monitor the proper use of labels on products and with authority for recall in the event a hazardous product is installed; (d) employing a controlled procedure for identifying the listed and/or labeled equipment or materials tested; and (e) rendering creditable reports or findings that are objective and without bias of the tests and test methods employed.

Raceway. A channel designed expressly for holding wire, cables, or busbars, with additional functions as permitted in this subpart. Raceways may be of metal or insulating material, and the term includes rigid metal conduit, rigid nonmetallic conduit, intermediate metal conduit, liquidtight flexible metal conduit, flexible metallic tubing, flexible metal conduit, electrical metallic tubing, underfloor raceways, cellular concrete floor raceways, cellular metal floor raceways, surface raceways, wireways, and busways.

Readily accessible. Capable of being reached quickly for operation, renewal, or inspections, without requiring those to whom ready access is requisite to climb over or remove obstacles or to resort to portable ladders, chairs, etc. (See *"Accessible."*)

Receptacle. A receptacle is a contact device installed at the outlet for the connection of a single attachment plug. A single receptacle is a single contact device with no other contact device on the same yoke. A multiple receptacle is a single device containing two or more receptacles.

Receptacle outlet. An outlet where one or more receptacles are installed.

Remote-control circuit. Any electrical circuit that controls any other circuit through a relay or an equivalent device.

Sealable equipment. Equipment enclosed in a case or cabinet that is provided with a means of sealing or locking so that live parts cannot be made accessible without opening the enclosure. The equipment may or may not be operable without opening the enclosure.

Separately derived system. A premises wiring system whose power is

derived from generator, transformer, or converter winding and has no direct electrical connection, including a solidly connected grounded circuit conductor, to supply conductors originating in another system.

Service. The conductors and equipment for delivering energy from the electricity supply system to the wiring system of the premises served.

Service conductors. The supply conductors that extend from the street main or from transformers to the service equipment of the premises supplied.

Service drop. The overhead service conductors from the last pole or other aerial support to and including the splices, if any, connecting to the service-entrance conductors at the building or other structure.

Service-entrance conductors, overhead system. The service conductors between the terminals of the service equipment and a point usually outside the building, clear of building walls, where joined by tap or splice to the service drop.

Service-entrance conductors, underground system. The service conductors between the terminals of the service equipment and the point of connection to the service lateral. Where service equipment is located outside the building walls, there may be no service-entrance conductors, or they may be entirely outside the building.

Service equipment. The necessary equipment, usually consisting of a circuit breaker or switch and fuses, and their accessories, located near the point of entrance of supply conductors to a building or other structure, or an otherwise defined area, and intended to constitute the main control and means of cutoff of the supply.

Service raceway. The raceway that encloses the service-entrance conductors.

Signaling circuit. Any electric circuit that energizes signaling equipment.

Switchboard. A large single panel, frame, or assembly of panels which have switches, buses, instruments, overcurrent and other protective devices mounted on the face or back or both. Switchboards are generally accessible from the rear as well as from the front and are not intended to be installed in cabinets. (See "*Panelboard.*")

Switches. (i) *General-use switch.* A switch intended for use in general distribution and branch circuits. It is rated in amperes, and it is capable of interrupting its rated current at its rated voltage.

(ii) *General-use snap switch.* A form of general-use switch so constructed that it can be installed in flush device boxes or on outlet box covers, or otherwise used in conjunction with wiring systems recognized by this subpart.

(iii) *Isolating switch.* A switch intended for isolating an electric circuit from the source of power. It hs no interrupting rating, and it is intended to be operated only after the circuit has been opened by some other means.

(iv) *Motor-circuit switch.* A Switch, rated in horsepower, capable of interrupting the maximum operating overload current of a motor of the same horsepower rating as the switch at rated voltage.

Switching devices. (Over 600 volts, nominal.) Devices designed to close and/or open one or more electric circuits. Included in this category are circuit breakers, cutouts, disconnecting (or isolating) switches, disconnecting means, and interrupter switches.

Transportable X-ray. X-ray equipment installed in a vehicle or that may readily be disassembled for transport in a vehicle.

Utilization equipment. Utilization equipment means equipment which utilizes electric energy for mechanical, chemical, heating, lighting, or similar useful purpose.

Utilization system. A utilizations system is a system which provides electric power and light for employee workplaces, and includes the premises wiring system and utilization equipment.

Ventilated. Provided with a means to permit circulation of air sufficient to remove an excess of heat, fumes, or vapors.

Volatile flammable liquid. A flammable liquid having a flash point below 38 degrees C (100 degrees F) or whose temperature is above its flash point, or Class II combustible liquid having a vapor pressure not exceeding 40 psia (276 kPa) at 38°C (100° F) whose temperature is above its flash point.

Voltage (of a circuit). The greatest root-mean-square (effective) difference of potential between any two conductors of the circuit concerned.

Voltage, nominal. A nominal value assigned to a circuit or system for the purpose of conveniently designating its voltage class (as 120/240, 480Y/277, 600, etc.). The actual voltage at which a circuit operates can vary from the nominal within a range that permits satisfactory operation of equipment.

Voltage to ground. For grounded circuits, the voltage between the given conductor and that point or conductor of the circuit that is grounded; for ungrounded circuits, the greatest voltage between the given conductor and any other conductor of the circuit.

Watertight. So constructed that moisture will not enter the enclosure.

Weatherproof. So constructed or protected that exposure to the weather will not interfere with successful operation. Rainproof, raintight, or watertight equipment can fulfill the requirements for weatherproof where varying weather conditions other than wetness, such as snow, ice, dust, or temperature extremes, are not a factor.

Wet location. See *"Location."*

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federal register

Friday
October 7, 1983

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Delaware: DE82-3015	June 4, 1982.
Hawaii: HI83-5104	Mar. 18,1983.
Idaho: ID82-5128	Nov. 26, 1982.
Iowa:	
IA83-4050	July 15, 1983.
IA83-4056	July 29, 1983.
Indiana:	
IN83-2067	Sept. 2, 1983.
IN83-2069	Sept. 2, 1983.
IN83-2070	Sept. 2, 1983.
IN83-2071	Sept. 9, 1983.
IN83-2072	Sept. 2, 1983.
IN83-2073	Sept. 9, 1983.
Louisiana:	
LA83-4019	Feb. 4, 1983.
LA83-4059	Aug. 5, 1983.
Michigan: MI83-2021	Mar. 18, 1983.
Montana: MT83-5101	Feb. 18, 1983.
Nevada:	
NV83-5103	Mar. 18, 1983.
NV83-5121	Sept. 23, 1983.
Oklahoma:	
OK83-4067	Sept. 16, 1983.
OK83-4068	Sept. 16, 1983.
Oregon: OR83-5100	Feb. 18, 1983.
Pennsylvania:	
PA81-3080	Oct. 23, 1981.
PA82-3007	Feb. 26, 1982.
Texas:	
TX82-4042	Aug. 20, 1982.
TX83-4026	Apr. 8, 1983.
Washington: WA83-5110	June 3, 1983

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Nebraska: NE79-4075 (NE83-4070)	Aug. 3, 1979.
North Carolina:	
NC81-1257 (NC83-1076)	July 6, 1981.
NC81-1258 (NC83-1077)	July 6, 1981.
NC81-1256 (NC83-1075)	July 6, 1981.
NC80-1099 (NC83-1078)	Aug. 29, 1980.
NC81-1234 (NC83-1079)	May 22, 1981.
NC80-1065 (NC83-1080)	May 2, 1980.
NC80-1085 (NC83-1081)	Aug. 1, 1980.
NC80-1077 (NC83-1082)	June 27, 1980.
New Mexico: NM83-4032 (NM83-4071)	Apr. 15, 1983.
Pennsylvania: PA82-3017 (PA83-3048)	Mar. 26,1982.
Wisconsin:	
WI82-2011 (WI83-2076)	Mar. 19, 1982.
WI82-2015 (WI83-2079)	Mar. 12, 1982.
WI82-2016 (WI83-2080)	Mar. 12, 1982.
WI82-2009 (WI83-2077)	Mar. 5, 1982.

Signed at Washington, D.C., this 29th day of September 1983.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

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DECISION NO. DE82-3015
MOD. #6
(47 FR 24526 - June 4, 1982)
STATE OF DELAWARE

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Boilermakers	$19.50	3.09
Bricklayers	14.01	4.19
Carpenters:		
Building & Heavy:		
New Castle Cos.	16.65	3.20
Marble Setters	13.74	4.19
Soft Floor Layers:		
New Castle & Kent Cos.	16.65	3.20
Stonemasons	14.01	4.19

DECISION NO. HI83-5104 -
MOD. #4
(48 FR 11610 - March 18, 1983)
Statewide, Hawaii

	Basic Hourly Rates	Fringe Benefits
Change:		
Landscape and Irrigation Laborers:		
Group 1	$9.23	$2.61
Group 2	8.41	2.61
Group 3	6.50	2.61
Sprinkler Fitters	17.37	3.23

DECISION NO. ID82-5128 - Mod #7
(47 FR 53612 - Nov. 26, 1982)
Statewide Idaho

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS; STONEMASONS; and MARBLE SETTERS:		
Area 3	$14.08	$2.40
IRONWORKERS: Ornamental, Reinforcing, and Structural		
Area 1	18.04	4.15
PLUMBERS:		
Area 2	16.30	4.16
ROOFERS:		
Area 2:		
Roofers and Kettlemen	13.65	2.00
Roofers working with coal tar and pitch products	15.65	2.00
POWER EQUIPMENT OPERATORS:		
Area 2:		
Change Fringes (All groups and Zones)		4.05
SPRINKLERFITTERS	17.42	3.23
TERRAZZO WORKERS and TILE SETTERS:		
Area 3	14.08	2.40

DECISION NO. IA83-4050 -
MOD. #2
(48 FR 32455 - 7/15/83)
Woodbury County, Iowa

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians	$14.34	2.07+ 3-3/4%

DECISION NO. IA83-4056 -
MOD. #3
(48 FR 34611 - 7/29/83)
Black Hawk, Cerro Gordo, Clinton, Des Moines, Dubuque, Johnson, Linn & Polk Counties, Iowa

ADD TO LABORERS ZONE 3 CLASSIFICATION DEFINITIONS
GROUP 2 - Jackhammers over 60 lbs.
GROUP 3 - Cutting torch burner

DECISION NO. IN83-2067
Mod. # 1
(48 FR 40064 - September 2, 1983)
BROWN, CLARK, ... , WAYNE COS., INDIANA

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS:		
Area 1	$17.75	2.70
Area 4	16.57	3.07
CARPENTERS:		
Area 3:		
Millwrights	14.85	2.90
Area 4:		
Carpenters & Soft Floor Layers	14.39	2.96
Millwrights	14.69	2.96
Piledrivermen	14.59	2.96
Area 5:		
Carpenters & Soft Floor Layers	14.21	2.02
Millwrights	14.96	2.02
Piledrivermen	14.71	2.02
CEMENT MASONS:		
Area 2	13.14	3.32
ELECTRICIANS:		
Area 1	17.10	2.06 + 3%
Area 4	17.50	19.5%
Area 5	16.60	2.40 + 3.2%
IRONWORKERS:		
Area 4	16.26	3.70
PAINTERS:		
Area 1:		
Brush, Roller, Drywall	14.17	
Structural Steel	14.92	
Spray & Sandblast	16.30	
ROOFERS:		
Area 2:		
Composition	15.25	2.28
Slate & Tile	15.50	2.28
SHEET METAL WORKERS:		
Area 3	17.22	3.75

DECISION NO. IN83-2069
Mod. # 1
(48 FR 40069 - September 2, 1983)
CLAY, DAVIESS, ... , & WARRICK COS., INDIANA

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS:		
Area 4:		
Carpenters	$15.95	3.35
ELECTRICIANS:		
Area 1	17.10	2.06 + 3%
Area 3	17.50	19.5%
IRONWORKERS:		
Area 1	17.60	2.21
MILLWRIGHTS:		
Area 1	15.95	3.35
PAINTERS:		
Area 3:		
Brush, Roller, Drywall	14.17	
Spray & Sandblast	16.30	
Structural Steel	14.92	
PLUMBERS & STEAMFITTERS:		
Area 2	17.85	2.51
ROOFERS:		
Area 2:		
Composition	15.25	2.28
Slate & Tile	15.50	2.28
SHEET METAL WORKERS:		
Area 1	17.78	2.80 + 3%
Area 2	17.24	2.65 + 3%
SPRINKLER FITTERS	16.67	3.23

DECISION NO. IN83-2070 Mod # 1 (48 FR 40074 - September 2, 1983) ELKHART, JASPER, KOSCIUSKO, LAGRANGE, MARSHALL, NEWTON, PULASKI & STARKE COS., INDIANA	Basic Hourly Rates	Fringe Benefits
CHARGE:		
BRICKLAYERS, STONEMASONS, CAULKERS, POINTERS & CLEANERS:		
Area 2	$15.74	2.06
CARPENTERS:		
Area 1:		
Carpenters & Soft Floor Layers	14.30	2.73
Millwrights & Pile-drivermen	14.55	2.73
Area 3:		
Carpenters, Piledrivermen & Soft Floor Layers	17.10	3.77
CEMENT MASONS:		
Area 1	14.89	2.06
IRONWORKERS:		
Area 2	17.60	4.52
PAINTERS:		
Area 4:		
Brush & Tapers	14.70	2.49
Spray & Sandblast	15.45	2.49
POWER EQUIPMENT OPERATORS:		
Area 1:		
Group 1	17.65	3.85
Group 2	17.15	3.85
Group 3	15.20	3.85
Group 4	14.00	3.85
AREA DESCRIPTIONS		
CEMENT MASONS:		
Area 3: ADD - Pulaski (Remainder of County)		

DECISION NO. IN83-2072 Mod # 1 (48 FR 40079 - September 2, 1983) LAKE, LAPORTE, PORTER & ST. JOSEPH COS., INDIANA	Basic Hourly Rates	Fringe Benefits
CHARGE:		
IRONWORKERS:		
Area 1	$17.60	4.52
LINE CONSTRUCTION:		
Area 2:		
Linemen, Equipment Operator, Crawler Type Equipment larger than D-4	17.60	.65 + 8.5%
Groundman Truck Driver w/Winch, Crawler Type Equipment, D-4 and Smaller	14.56	.65 + 8.5%
Groundmen Truck Driver w/out Winch	13.73	.65 + 8.5%
Groundmen	13.13	.65 + 8.5%
POWER EQUIPMENT OPERATORS:		
Building Construction:		
Area 1:		
Group 1	17.65	3.85
Group 2	17.15	3.85
Group 3	15.20	3.85
Group 4	14.00	3.85
ADD:		
LABORERS:		
Utility Construction:		
St. Joseph County:		
Group 1	11.18	1.94
Group 2	11.33	1.94
Group 3	11.38	1.94
Group 4	11.58	1.94
Group 5	12.03	1.94
FOR GROUP DEFINITIONS - SEE LABORERS: HEAVY & HIGHWAY CONSTRUCTION DEFINITIONS		

DECISION NO. IN83-2071 Mod # 2 (48 FR 40823 - September 9, 1983) ADAMS, ALLEN, ... , & WHITLEY COS., INDIANA	Basic Hourly Rates	Fringe Benefits
CHARGE:		
BRICKLAYERS; CAULKERS; POINTERS; CLEANERS & STONEMASONS:		
Area 3	$15.47	2.07
Area 5	15.84	2.58
CARPENTERS; MILLWRIGHTS; PILEDRIVERMEN & SOFT FLOOR LAYERS:		
Area 5:		
Carpenters & Soft Floor Layers	15.11	2.42
Millwrights & Pile-drivermen	15.46	2.42
Area 6:		
Carpenters & Soft Floor Layers	14.39	2.96
Millwrights	14.69	2.96
Piledrivermen	14.59	2.96
ELECTRICIANS:		
Area 2	17.50	19.5%
Area 4	16.60	2.40 + 3.2%
Area 5	17.95	1.55 + 3.2%
Area 7	17.10	2.06 + 3%
LINE CONSTRUCTION:		
Linemen, Groundmen Equipment Operator	17.60	.65 + 8.5%
Groundmen - Truck Driver w/Winch	14.56	.65 + 8.5%
Groundmen - Truck Driver w/out Winch	13.73	.65 + 8.5%
Groundmen	13.13	.65 + 8.5%

DECISION NO. IN83-2071 Mod # 2 (Cont'd)	Basic Hourly Rates	Fringe Benefits
MARBLE SETTERS; TILE SETTERS & TERRAZZO WORKERS:		
Area 2	$14.80	1.77
Area 3	15.47	2.07
Area 5:		
Marble & Tile Setters	16.06	2.54
PAINTERS:		
Area 5:		
Brush, Roller & Drywall	14.17	
Structural Steel	14.92	
Spray & Sandblasting	16.30	
PLASTERERS:		
Area 6	14.80	1.77
ROOFERS:		
Area 2:		
Composition	15.25	2.28
Slate & Tile	15.50	2.28

DECISION NO. IN83-2013
Mod # 1
(48 FR 40831 - September 9, 1983)
STATEWIDE INDIANA except LAKE, LAPORTE, PORTER & ST. JOSEPH COS.

CHANGE:

	Basic Hourly Rates	Fringe Benefits
CEMENT MASONS:		
Area 2	$14.89	2.06
IRONWORKERS:		
Area 3	17.60	4.52
Area 8	16.26	3.70
Area 11	17.60	2.21
PAINTERS:		
Area 9:		
Brush & Roller	14.17	
Structural Steel	14.92	
Spray & Sandblast	16.30	
LINE CONSTRUCTION:		
Area 1:		
Lineman, Line Truck Op., Mechanical Equip. Op.	17.96	8%+1.00
Groundman	11.14	8%+1.00
Area 4:		
Lineman, Groundman Equip. Op., Crawler Type Equip. larger than D-4	17.60	8½%+.65
Groundman Truck Driver w/Winch, Crawler Type Equip. D-4 & Smaller	14.56	8½%+.65
Groundman Truck Driver w/out Winch	13.73	8½%+.65
Groundman	13.13	8½%+.65

AREA DEFINITIONS - PLUMBERS & PIPEFITTERS:
Area 1 - Dearborn, Ohio & Ripley Cos.
Area 2 - Brown, Clark, Crawford, Daviess, DuBois, Floyd, Gibson, Harrison, Jackson, Jefferson, Knox (S of Hwy 50), Lawrence, Martin, Monroe, Orange, Owen, Perry, Pike, Posey, Scott, Spencer, Switzerland, Vanderburg, Warrick & Washington Cos.
Area 3 - Benton, Carroll, Clay, Clinton, Fountain, Greene, Knox (N of Hwy 50), Montgomery, Parke, Putnam (W½), Sullivan, Tippecanoe, Vermillion, Vigo, Warren & White Cos.
Area 4 - Adam, Allen, Blackford, DeKalb, Elkhart, Grant, Huntington, Kosciusko, LaGrange, Noble, Steuben, Wabash, Wells & Whitley Cos.
Area 5 - Cass, Fulton, Jasper (South of the N side of the City of Rensselaer), Marshall, Miami (N of Hwy 218), Pulaski, & Starke Cos.
Area 6 - Newton County
Area 7 - Jasper (Remainder of County)
Area 8 - Bartholomew (Camp Atterbury), Boone, Hamilton, Hancock, Hendricks, Howard, Johnson, Marion, Miami (Rem. of Co.), Morgan, Putnam (Rem. of Co.), Shelby & Tipton Cos.
Area 9 - Bartholomew (Rem. of Co.), Decatur & Jennings Cos.
Area 10 - Delaware, Fayette, Franklin, Henry, Jay, Madison, Randolph, Rush, Union & Wayne Cos.

MODIFICATIONS P. 5

DECISION NO. IN83-2073
Mod # 1 (Cont'd)

ADD:

	Basic Hourly Rates	Fringe Benefits
PLUMBERS & PIPEFITTERS:		
Area 1:		
Plumbers	$16.32	3.42
Pipefitters	17.51	3.86
Area 2	19.92	2.20
Area 3	18.40	2.60
Area 4	17.68	2.87
Area 5	16.18	2.45
Area 6	16.15	3.35
Area 7	16.73	3.81
Area 8	17.85	2.51
Area 9	18.11	2.05
Area 10	17.95	2.65

MODIFICATIONS P. 6

DECISION NO. LA83-4019 - MOD. #8
(48 FR 5448 - 2/4/83)
Calcasieu Par.,Louisiana

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Sheet metal workers	$17.28	3.12+3%

DECISION NO. LA83-4059 - MOD. #3
(48 FR 35836 - 8/5/83)
Statewide Louisiana

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Plumbers & pipefitters:		
Zone 3:		
Journeymen:		
Contracts containing $75,000 or less of plumbing work & 50 tons of air conditioning/refrigeration or less (excluding chilled water systems & all work on industrial jobsites	10.00	2.70
All other work	15.25	2.70
Helpers(exterior sewer & all related work including bell holding & cramming,cutting holes,unloading & loading of materials, equipment & tools to & from jobsite & distribution & stock piling of same,dismantling,erecting & dismembering scaffolding.general clean up of site:		
Contracts containing $75,000 or less plumbing work & 50 tons of airconditiong/refrigeration or less (excluding chilled water systems & all work on industrial jobsites	4.50	
All other work	4.575	.03

DECISION NO. LA83-4059 MOD. #3 (CONT'D)

	Basic Hourly Rates	Fringe Benefits
Plumbers & Pipefitters (Cont'd):		
Zone 6:		
Journeymen	$15.05	1.90
Helpers(exterior sewer & all related work including bell holding & cramming,cutting holes,unloading & loading of materials,equipment & tools to & from jobsite & distribution & stock piling of same,dismantling, erecting & dismembering scaffold,general clean up of site	4.515	.03
Sheet metal workers:		
Zone 1	17.28	3.12+3%
Zone 4	13.72	1.78+3%

DECISION #MI83-2021 - MOD. #2
(48 FR 11616 - March 18, 1983)
Bay, Genesee, Huron, Iosco, Lapeer, Saginaw, St. Clair, Sanilac, Shiawassee, & Tuscola Counties, Michigan

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Bricklayers & Stone masons:		
Genesee, Lapeer, & Shiawassee Counties	$14.92	3.41
Cement masons:		
Lapeer County	13.60	3.35
Plasterers:		
Lapeer County	13.85	3.35

DECISION NO. NV83-5103 - Mod. #5 (48 FR 11629 - March 18, 1983) Statewide (does not include the Nevada Test Site and Tonopah Test Range and Highway Construction in Douglas County), Nevada	Basic Hourly Rates	Fringe Benefits
Change:		
Boilermakers	$21.39	$3.96
Bricklayers; Stonemasons: Area 2	14.40	1.96
Laborers: Clark, Esmeralda and Lincoln Counties; Nye County (South half, including Highway #6):		
Group 1	15.05	3.19
Group 2	15.26	3.19
Group 3	15.36	3.19
Group 4	15.45	3.19
Group 5	15.55	3.19
Marble Setters: Area 2	14.40	1.96
Painters: Area 1:		
Brush; Roller Paperhangers; Spray; Steel; Swing Stage; Sandblasters; Sign; Tapers; Structural Steel - Brush	18.30	1.86
Structural Steel - Spray; Sandblaster - Structural Steel; Buffing Steel	18.65	1.86
Steeplejack	19.00	1.86
Area 2:	20.05	1.86
Brush and Roller Spray; Taper; Paperhangers; Sandblaster Spray, Swing Stage up to 40 ft.; Spray, Steel	17.32	2.08
Brush, Swing Stage up to 40 ft.; Brush, Steel	17.82	2.08
	18.07	2.08
	17.57	2.08

	Basic Hourly Rates	Fringe Benefits
Terrazzo Workers; Tile Setters: Area 2	$14.40	$1.96
Truck Drivers: Clark, Esmeralda, and Lincoln Counties; and Nye County (south of and excluding Highway #6):		
Group 1	15.54	2.78
Group 2	15.65	2.78
Group 3	15.70	2.78
Group 4	15.86	2.78
Group 5	16.04	2.78
Group 6	16.54	2.78

DECISION NO. NV83-5121 - Mod. #1 (48 FR 43532 - September 23, 1983) Clark County (does not include the Nevada Test Site), Nevada	Basic Hourly Rates	Fringe Benefits
Change:		
Boilermakers	21.39	3.96
Laborers:		
Group 1	15.05	3.19
Group 2	15.26	3.19
Group 3	15.36	3.19
Group 4	15.45	3.19
Group 5	15.55	3.19
Truck Drivers:		
Group 1	15.54	2.78
Group 2	15.65	2.78
Group 3	15.70	2.78
Group 4	15.86	2.78
Group 5	16.04	2.78
Group 6	16.54	2.78

DECISION NO. MT83-5101 - Mod. #3 (48 FR 7378 - February 18, 1983) Statewide, Montana	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters: Area 6:		
Carpenters	$13.06	$3.61
Piledrivermen	13.56	3.61
Millwrights	14.06	3.61

DECISION #OK83-4067-MOD#1 (48 FR 41710-September 16, 1983) Adair, Atoka, Bryan, Coal, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, Leflore, Latimer, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Tulsa, Sequoyah, Wagoner & Washington Counties, Oklahoma	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS: AREA 8 Carpenters	$12.22	$1.34
Millwrights, Piledrivermen	12.47	1.34
SPRINKLER FITTERS	16.17	3.23
TILE LAYERS, TERRAZZO WORKERS, AND MARBLE MASONS: AREA 1	16.25	1.30

DECISION #OK83-4069-MOD#1 (48 FR 41714-September 16, 1983) Alfalfa, Beckham, Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Roger Mills, Pottawatomie, Seminole, Stephens, Tillman, Washita, Woods and Woodward Counties, Oklahoma	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Ironworkers: AREA 2	13.625	2.95
Roofers	13.40	1.39
Sprinkler Fitters	16.17	3.23

DECISION NO. OR83-5100 - Mod #9 (48 FR 7379 - Feb. 18, 1983) Statewide Oregon	Basic Hourly Rates	Fringe Benefits
OMIT:		
Laborers: Group 5: Omit the following: "(includes Guard Rail, Median Rail, Reference Post, Guide Post, Right-of-Way Marker)"		
ADD:		
Laborers: Group 1: (Includes Guard Rail, Median Rail, Reference Post, Guide Post, Right-of-Way Marker)		
Sheet Metal Workers: Area 4: Add Jackson County		

DECISION NO. TX82-4042 - MOD. #6 (47 FR 36522 - 8/20/82) Bowie County, Texas	Basic Hourly Rates	Fringe Benefits
Omit all wage rates & classifications for plumbers & pipefitters		
ADD:		
Plumbers & pipefitters	$14.60	1.85

DECISION NO. TX83-4026 - MOD. #6 (48 FR 15425 - 4/8/83) Jefferson & Orange Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Plumbers	18.71	1.09

DECISION NO. PA81-3080 - MOD. #5 (46 FR 52078 - October 23, 1981) Lehigh County, Pa.	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers	17.51	2.04
Boilermakers	19.33	2.365
Carpenters	15.50	2.91
Bricklayers & Stonemasons	14.05	3.42
Electricians	15.75	1.84+ 3 3/8%
Elevator Constructors	15.475	2.69+ a+b
Elevator Constructor Helpers	70%JR	2.69+ a+b
Elevator Constructors Helpers (Prob.)	50%JR	
Ironworkers, Structural	18.45	3.70
Ironworkers, Reinforcing	18.45	3.70
Ironworkers, Ornamental	18.45	3.70
Line Construction:		
Linemen & Cable Splocer	15.52	.80+ 3 3/8%
Groundman	9.99	.80+ 3 3/8%
Winch Truck Operator	11.69	.80+ 3 3/8%
Millwrights	15.90	2.91
Painters:		
Brush	14.55	3.43
Structural Steel	16.55	3.43
Spray	15.55	3.43
Piledrivermen	14.82	6.16+ d
Sheet Metal Workers	15.23	4.39
Roofers, Composition, Damp & Waterproofers	18.17	2.73+e
Terrazzo Workers	13.70	3.40
Tile Setters	13.45	3.42
Footnote:		
e. Paid Holiday: Election Day.		

DECISION NO. PA82-3007 - MOD. #16 (47 FR 8529 - Feb. 26, 1982) Bucks, Chester, Delaware, Montgomery & Phil. Cos., Pennsylvania	Basic Hourly Rates	Fringe Benefits
Add:		
Electricians		
Zone 7		
Residential up to and including 4 stories	8.50	.84+3%

DECISION NO. WA83-5110 - Mod # 7 (48 FR 25108 - June 3, 1983) Statewide Washington	Basic Hourly Rates	Fringe Benefits
CHANGE:		
TRUCK DRIVERS:		
Area 2:		
Group 1	$17.06	$3.64
Group 2	17.11	3.64
Group 3	17.16	3.64
Group 4	17.27	3.64
Group 5	17.33	3.64
Group 6	17.37	3.64
Group 7	17.38	3.64
Group 8	17.44	3.64
Group 9	17.49	3.64
Group 10	17.51	3.64
Group 11	17.54	3.64
Group 12	17.64	3.64
Group 13	17.66	3.64
Group 14	17.70	3.64
Group 15	17.82	3.64
Group 16	17.86	3.64
Group 17	17.98	3.64
Group 18	18.03	3.64
Group 19	18.19	3.64
Group 20	18.35	3.64
Group 21	18.51	3.64
Group 22	12.00	3.64
ADD:		
Truck Drivers Area 2:		
Group Description:		
Group 22: Escort or Pilot Car		
OMIT:		
Truck Drivers Area 2:		
Group Description: Group 1: Escort or Pilot Car		

STATE: Nebraska

COUNTIES: Hall, Howard, Hamilton and Merrick Counties

DECISION NO.: NE83-4070

DATE: Date of Publication

Supersedes Decision No. NE79-4075 dated August 3, 1979 in 44 FR 45856.

DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANIC	$ 8.13	
BRICKLAYERS/STONEMASONS	11.24	
CARPENTERS	10.15	
CEMENT MASONS	6.00	
DRYWALL:		
Hangers	6.60	
Finishers	5.70	
ELECTRICIANS	8.25	
GLAZIERS	6.44	
LABORERS	5.26	
LATHERS	8.50	
METAL BUILDING ERECTOR	5.60	
PAINTERS, BRUSH	6.98	
PLUMBERS	11.57	
POWER EQUIPMENT OPERATORS:		
Asphalt Paver, Screed	7.30	
Backhoe, Operator	7.00	
Crane Operator	7.00	
Forklift Operator	6.00	
Motor Grader	5.90	
Oiler	7.25	
Scraper	5.80	
Tractor	7.25	
ROOFERS	5.15	
SHEET METAL WORKERS	7.39	
SPRINKLER FITTERS	14.29	2.43
STEAMFITTERS & PIPEFITTERS	15.65	2.20
TILE SETTERS	10.00	
TRUCK DRIVERS*	5.65	
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards Contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA COUNTIES: *See Below
DECISION NUMBER: NC83-1076 DATE: DATE OF PUBLICATION
Supersedes Decision No.: NC81-1257 dated July 6, 1981 in 46 FR 35004.
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS--Consisting of single family homes and apartments up to 4 stories.

*COUNTIES: CHATHAM, LEE, CUMBERLAND, MOORE, HOKE, HARNETT, MOORE, & SAMPSON

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANIC	$ 5.59	
BRICKLAYERS	6.95	
CARPENTERS	5.89	
CARPET INSTALLERS	5.43	
CEMENT MASONS	5.62	
DRYWALL FINISHERS	6.60	
DRYWALL HANGERS	5.89	
ELECTRICIANS	6.08	
GLAZIERS	5.88	
IRONWORKERS	5.50	
INSULATION INSTALLERS	4.62	
LABORERS, General	3.90	
PAINTERS	5.58	
PLASTERERS	8.00	
PLUMBERS & PIPEFITTERS	6.38	
POWER EQUIPMENT OPERATORS:		
Backhoe	5.46	
Bulldozer	5.48	
Forklift	4.50	
Grader	5.55	
Loader	5.43	
Pan	4.28	
Paver	4.63	
Roller	4.25	
Saw	4.50	
Screed	4.58	
Tractor	5.00	
ROOFERS	$ 5.59	
SHEET METAL WORKERS	5.77	
SOFT FLOOR LAYERS	5.80	
TILE SETTERS	7.50	
TRUCK DRIVERS	3.94	
WELDERS--Receive rate prescribed for craft to which the welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA COUNTIES: BEAUFORT, BERTIE, CHOWAN, DARE, FRANKLIN, HERTFORD, HYDE, MARTIN, NORTHAMPTON, TYRRELL, VANCE, WARREN, & WASHINGTON

DECISION NUMBER: NC83-1077 DATE: DATE OF PUBLICATION
Supersedes Decision No.: NC81-1258 dated July 6, 1981 in 46 FR 35005.
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS--Consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING & HEATING MECHANICS	$ 5.87	
BRICKLAYERS	6.47	
CARPENTERS	5.00	
CEMENT MASONS	5.77	
DRYWALL FINISHERS	6.80	
DRYWALL HANGERS	6.64	
ELECTRICIANS	5.50	
INSULATION INSTALLERS	4.23	
IRONWORKERS	5.20	
LABORERS:		
Unskilled	3.76	
Pipelayers	4.55	
Asphalt Rakers	4.63	
PAINTERS	5.00	
PLUMBERS & PIPEFITTERS	5.75	
ROOFERS	4.00	
SHEET METAL WORKERS	5.02	
SOFT FLOOR & CARPET LAYERS	6.00	
TILE SETTERS	7.50	
TRUCK DRIVERS	4.20	
WELDERS--Receive rate prescribed for craft to which the welding is incidental.		
POWER EQUIPMENT OPERATORS:		
Backhoe	$ 5.23	
Bulldozer	5.49	
Front End Loader	5.17	
Mechanic	5.75	
Motor Grader	6.00	
Pan-Scraper	5.00	
Paver-Screed	4.93	
Roller	4.50	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

STATE: NORTH CAROLINA
DECISION NUMBER: NC83-1075
COUNTIES: * See Below
DATE: DATE OF PUBLICATION
Supersedes Decision No.: NC81-1258 dated July 6, 1981 in 46 FR 35005.
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS--consisting of single family homes and apartments up to and including four stories.

*COUNTIES: Edgecombe, Greene, Halifax, Lenoir, Johnston, Nash, Pitt, Wayne, and Wilson

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$ 7.18	
CARPENTERS	6.00	
CARPET INSTALLERS & SOFT FLOOR LAYERS	7.41	
CEMENT MASONS	6.11	
DRYWALL FINISHERS	7.11	
DRYWALL HANGERS	6.92	
ELECTRICIANS	6.31	
GLAZIERS	6.91	
INSULATION INSTALLERS	4.89	
LABORERS:		
Asphalt Rakers	5.00	
Mason Tenders	4.64	
Pipelayers	5.00	
Unskilled	4.29	
PAINTERS	6.00	
PLUMBERS & PIPEFITTERS	6.82	
POWER EQUIPMENT OPERATORS:		
Backhoe	5.97	
Bulldozer	6.11	
Distributor	5.42	
Dragline	5.39	
Forklift	5.00	
Loader	5.91	
Motor Grader	7.00	
Roller	5.09	
ROOFERS	$ 6.34	
SHEET METAL WORKERS	5.64	
TILE SETTERS	6.85	
TRUCK DRIVERS	4.57	
WELDERS--Receive rate prescribed for craft to which welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award on'- as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

STATE: NORTH CAROLINA
DECISION NUMBER: NC83-1078
COUNTIES: ALAMANCE, CASWELL, GUILFORD, RANDOLPH, & ROCKINGHAM
DATE: DATE OF PUBLICATION
Supersedes Decision No.: NC80-1099 dated August 29, 1980 in 45 FR 57947.
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS--Consisting of single family homes and apartments up to 4 stories.

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANICS	$ 7.10	
BRICKLAYERS	7.77	
CARPENTERS	6.13	
CARPET INSTALLERS	5.92	
CEMENT MASONS	6.04	
DRYWALL FINISHERS	6.82	
DRYWALL HANGERS	7.01	
ELECTRICIANS	7.11	
GLAZIERS	5.46	
IRONWORKERS	7.10	
INSULATION INSTALLERS	5.30	
LABORERS, GENERAL	4.60	
PAINTERS	5.61	
PLUMBERS & PIPEFITTERS	7.69	
POWER EQUIPMENT OPERATORS:		
Backhoe	6.84	
Bulldozer	6.55	
Loader	6.16	
Motor Grader	7.30	
Pan	6.00	
Paver	5.95	
Roller	5.04	
Tractor	5.10	
ROOFERS	$ 5.95	
SHEET METAL WORKERS	6.53	
SOFT FLOOR LAYERS	5.71	
TILE SETTERS	6.58	
TRUCK DRIVERS	4.98	
WELDERS--Receive rate prescribed for craft to which the welding is incidental		

Unlirted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA COUNTIES: *See Below
DECISION NUMBER: NC83-1079 DATE: DATE OF PUBLICATION
Supersedes Decision No.: NC81-1234 dated May 22, 1981 in 46 FR 28124.
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS--Consisting of single family homes and apartments up to and including 4 stories.

*COUNTIES: DURHAM, GRANVILLE, FRANKLIN, ORANGE, PERSON, WAKE, VANCE, & WARREN

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANIC	$ 6.84	
BRICKLAYERS	7.47	
CARPENTERS	5.93	
CONCRETE FORM SETTER	7.12	
CEMENT MASONS	6.12	
DRYWALL FINISHER	7.35	
DRYWALL HANGER	7.04	
ELECTRICIANS	6.39	
GLAZIERS	8.09	
INSULATION INSTALLERS	5.55	
IRONWORKERS	5.84	
LABORERS, General	4.76	
PAINTERS	5.80	
PLUMBERS & PIPEFITTERS	6.82	
POWER EQUIPMENT OPERATORS:		
Backhoe	6.41	
Bulldozer	5.43	
Crane	6.50	
Distributor	4.90	
Forklift	4.80	
Greaseman - Oiler	5.25	
Loader	6.11	
Mechanic	6.95	
Motor Grader	6.49	
Pan	5.00	
Paver	5.89	
Roller	5.20	
Screed	6.09	
Tractor	4.83	
ROOFERS	$ 6.24	
SHEET METAL WORKERS	6.31	
SOFT FLOOR LAYERS & CARPET LAYERS	6.32	
TILE SETTERS	6.41	
TRUCK DRIVERS	4.99	
WELDERS--Receive prescribed for craft to which the welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA COUNTIES: * See Below
DECISION NUMBER: NC83-1080 DATE: DATE OF PUBLICATION
Supersedes Decision No.: NC80-1065 dated May 2, 1980 in 45 FR 29521.
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS--Consisting of single family homes and apartments up to and including 4 stories.

*COUNTIES: ANSON, CABARRUS, CLEVELAND, GASTON, LINCOLN, MECKLENBURG, MONTGOMERY, RONAN, STANLEY, & UNION.

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANICS	$ 5.82	
BRICKLAYERS	7.72	
CARPENTERS	6.34	
CARPET INSTALLERS & SOFT FLOOR LAYERS	7.13	
CEMENT MASONS	7.02	
DRYWALL FINISHERS	6.84	
DRYWALL HANGERS	6.96	
ELECTRICIANS	6.38	
FORM SETTERS	5.50	
IRONWORKERS	5.50	
INSULATION INSTALLERS	3.93	
LABORERS:		
Unskilled	3.93	
Mason Tenders	4.54	
Mortar Mixers	4.59	
Pipelayers	5.08	
Asphalt Rakers	4.86	
PAINTERS	5.79	
PLUMBERS & PIPEFITTERS	7.19	
POWER EQUIPMENT OPERATORS:		
Air Drill	6.00	
Backhoe	6.66	
Bulldozer	5.86	
Compactor	4.60	
Forklift	5.50	
Motor Grader	6.68	
Loader	5.96	
Paver	5.92	
Roller	4.99	
Scraper	4.80	
Screed	5.39	
Tractor	5.25	
ROOFERS	$ 6.15	
TILE SETTERS	7.41	
TRUCK DRIVERS	5.16	
WELDERS--Receive rate prescribed for the craft to which the welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA

COUNTIES: CRAVEN, CARTERET, DUPLIN, JONES, ONSLOW, & PAMLICO

DECISION NUMBER: NC83-1081

DATE: DATE OF PUBLICATION

Supersedes Decision No.: NC80-1085 dated August 1, 1980 in 45 FR 51415.

DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS--Consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANICS	$ 8.00	
BRICKLAYERS	7.00	
CARPENTERS	5.83	
CEMENT MASONS	5.00	
DRYWALL FINISHERS	7.00	
DRYWALL HANGERS	6.05	
ELECTRICIANS	5.30	
INSULATION INSTALLER	4.00	
LABORERS:		
Unskilled	3.52	
Mason Tenders	3.84	
Mortar Mixers	5.00	
Pipelayers	4.47	
PAINTERS	5.00	
PLASTERERS	8.00	
PLUMBERS & PIPEFITTERS	5.51	
ROOFERS	5.91	
SHEET METAL WORKERS	4.78	
SOFT FLOOR LAYERS	7.50	
TILE SETTERS	8.00	
TRUCK DRIVERS	4.00	
WELDERS--Receive prescribed for the craft to which the welding is incidental.		
POWER EQUIPMENT OPERATORS:		
Asphalt Raker	$ 4.39	
Backhoe	5.00	
Bulldozer	5.10	
Grader	5.00	
Loader	5.00	
Roller	3.94	
Tractor	4.50	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the Labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA

COUNTIES: BURKE, CATAWBA, POLK, & RUTHERFORD

DECISION NUMBER: NC83-1082

DATE: DATE OF PUBLICATION

Supersedes Decision No.: NC80-1077 dated June 27, 1980 in 45 FR 43649.

DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS--Consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING & HEATING MECHANICS	$ 5.00	
BRICKLAYERS	7.00	
CARPENTERS	5.71	
CEMENT MASONS	5.00	
DRYWALL HANGERS	7.00	
ELECTRICIANS	4.79	
LABORERS:		
Unskilled	3.74	
Asphalt Rakers	4.50	
Mason Tenders	4.50	
PAINTERS	4.00	
PLUMBERS & PIPEFITTERS	5.50	
ROOFERS	6.08	
SHEET METAL WORKERS	$ 4.86	
TRUCK DRIVERS	4.50	
WELDERS--Receive rate prescribed for craft to which the welding is incidental.		
POWER EQUIPMENT OPERATORS:		
Backhoes	6.00	
Bulldozers	6.00	
Rollers	4.50	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NEW MEXICO COUNTY: STATEWIDE
DECISION NO. NM83-4071 DATE: Date of Publication
SUPERSEDES DECISION NO. NM83-4032 dated April 15, 1983 in 48FR16413
DESCRIPTION OF WORK: GENERAL BUILDING AND HEAVY ENGINEERING CONSTRUCTION shall include the construction, alteration, repair and demolition of buildings, including residential buildings, office buildings, warehouses, industrial and commercial buildings, institutional and public buildings, and all air conditioning, conduit, heating and other mechanical and electrical works and site preparation for building or heavy engineering projects under this classification, stadia; and shall include electrical, gas, water, sewer lines, and other such utility construction which are part of projects under this classification and included within the property line or less than five (5) feet from the building or heavy engineering structure, whichever is closer, provided, however, regard to electrical utilities such construction shall include construction from the first attachment of incoming power source without regard to the property line or proximity to the building or the heavy engineering structure; and include construction, alteration, repair and demolition of heavy engineering work such as power generating plants, pump stations, natural gas compressing stations; covered reservoirs and covered sewage and water treatment facilities; concrete linings for canals, ditches and channels; concrete dams; earth dams of one million (1,000,000) cubic yards or over; radio towers, ovens, furnaces, kilns, silos, shafts and tunnels (other than highway shafts and tunnels), hydro-electric projects; and well drilling, telephone and electrical transmission lines which are part of GENERAL BUILDING AND HEAVY ENGINEERING PROJECTS: mining appurtenances such as tipples, washeries and loading and discharfing chutes, and sp specialized structures for testing, launching and recovering spaces and other rocket-type missiles, (ALSO INCLUDING RESIDENTIAL PROJECTS IN SANTA FE, BERNALILLO, RIO ARRIBA, TAOS, SANDOVAL, CIBOLA AND VALENCIA COUNTIES).

DECISION #NM83-4071 Page 2

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS - ZONE I	$16.78	3.34
ASBESTOS WORKERS - ZONE II	16.00	2.37
BOILERMAKERS	13.75	3.44
BRICKLAYERS-STONEMASONS:		
Zone I-A	13.86	1.82
Zone I-B	15.36	1.82
Zone I-C	16.11	1.82
Zone II	13.96	1.72
Zone III	15.48	1.72
Zone IV	14.16	1.52
Zone V	15.66	1.52
Zone VI-A	13.66	1.62
Zone VI-B	15.16	1.62
Zone VII	15.39	1.42
Zone VIII	13.64	1.42
CARPENTERS/LATHERS:		
(Residential Construction including erection, alteration, repair, modification, addition to single family houses, walk-up apartments and walk-up condominium)		
Zone I-A	8.15	2.80
Zone I-B	9.65	2.80
Zone I-C	10.40	2.80
Building, Heavy and Residential const. excluding single family houses, walk-up apartments and walk-up condominium)		
Zone 2-A	13.80	2.80
Zone 2-B	15.30	2.80
Zone 2-C	16.05	2.80
CARPENTERS(San Juan County):		
Zone I	14.20	2.80
Zone II	16.45	2.80
Zone III	16.45	2.80
CEMENT MASONS:		
Area I	11.99	2.22
Area II:		
Zone 1	11.99	2.22
Zone 2	13.24	2.22
Zone 3	13.49	2.22
CEMENT MASONS (Residential Sandoval, Bernalillo, Valencia Counties	8.67	2.22
Rio Arriba, Santa Fe and Taos Counties	11.79	2.22
CEMENT MASONS (HEAVY CONST.)	11.99	2.22
CEMENT MASONS (COMPOSITION & MACHINE OPERATORS):		
Area I	12.24	2.22
Area II - Zone I	12.24	2.22
Area II - Zone II	13.74	2.22
Area II - Zone III	13.99	2.22

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
ZONE I		
Area 1-A	$16.45	Y
Area 1-B	17.93	Y
Area 1-C	18.92	Y
Area 1-D	20.73	Y
ZONE II	18.92	Y
Y - 3-1/2% + 2.00		
ZONE III		
3-A	13.60	3½%+.80
3-B	15.05	3½%+.80
ZONE IV		
4-A	16.50	3%+.82
4-B	16.95	3%+.82
4-C	17.10	3%+.82
4-D	17.35	3%+.82
CABLE SPLICERS:		
ZONE I		
Area 1-A	18.10	K
Area 1-B	19.58	K
Area 1-C	20.57	K
Area 1-D	22.38	K
K - 3-1/2% + 2.00		
ZONE II	20.57	K
K - 3-1/2% + 2.00		
ZONE III		
3-A	13.85	3½%+.80
3-B	15.30	3½%+.80
ZONE IV		
4-A	16.85	3%+.82
4-B	17.30	3%+.82
4-C	17.45	3%+.82
4-D	17.90	3%+.82
ELEVATOR CONSTRUCTORS:		
AREA I	16.28	JJ
AREA II	12.38	JJ
Elevator constr. helpers	70%JR	JJ
Elevator prob. helpers	50%JR	
JJ - $2.69 + seven paid Holidays; and employees with 6 mos. to 5 yrs. of service 6%; over 5 yrs. 8% of basic hourly rate.		
GLAZIERS	12.69	1.20
IRONWORKERS - Zone I	14.60	2.83
IRONWORKERS - Zone II:		
Area 1	14.60	2.83
Area 2	15.85	2.83
Area 3	17.85	2.83
Area 4	17.10	2.83

DECISION #NM83-4071	Basic Hourly Rates	Fringe Benefits
IRONWORKERS - ZONE III	$13.55	2.95
IRONWORKERS -Zone IV	14.55	2.95
LABORERS (BLDG. & HEAVY CONSTRUCTION) STATEWIDE INCLUDING THAT AREA WITHIN 15 miles of Farmington):		
ZONE I		
Group I	9.75	1.91
Group II	10.05	1.91
Group III	10.35	1.91
Group IV	10.50	1.91
LABORERS (BLDG.-HVY. CONSTRUCTION-FARMINGTON AREA ONLY):		
ZONE II		
Group I	11.25	1.91
Group 2	11.55	1.91
Group 3	11.85	1.91
Group 4	12.00	1.91
ZONE III		
Group I	11.50	1.91
Group 2	11.80	1.91
Group 3	12.10	1.91
Group 4	12.25	1.91
LABORERS(RESIDENTIAL CONSTR.):		
Group I	5.02	1.91
Group II	5.32	1.91
Group III	5.62	1.91
LEADBURNERS:		
ZONE I	17.29	3.43
ZONE II	18.04	3.43
ZONE III	19.54	3.43
ZONE IV (SPECIFIC AREA)	18.09	3.43
COMMERCIAL LINE WORK:		
AREA A		
LINEMEN-TECHNICIANS		
Zone I	16.45	P
Zone II	17.93	P
Zone III	18.92	P
Zone IV	20.73	P
CABLE SPLICERS		
Zone I	18.10	P
Zone II	19.58	P
Zone III	20.57	P
Zone IV	22.36	P
EQUIPMENT OPR. (Includes hellcopter op.):		
Zone I	15.62	P
Zone II	17.10	P
Zone III	18.09	P
Zone IV	19.90	P
EQUIPMENT MECHANIC (include hellcopter mech.)		
POWDERMAN		
Zone I	14.31	P
Zone II	15.79	P
Zone III	16.78	P
Zone IV	18.59	P

Page 3	Basic Hourly Rates	Fringe Benefits
COMMERCIAL LINE WORK (CONT'D)		
AREA A (cont'd)		
GROUNDMAN-JACKHAMMER OPRS.:		
Zone I	11.68	P
Zone II	13.16	P
Zone III	14.15	P
Zone IV	15.96	P
P - 3-1/2% + $2.00		
AREA B		
LINEMEN-TECHNICIANS		
Zone I	10.15	3½%+.60
Zone II	11.60	3½%+.60
CABLE SPLICERS		
Zone I	10.40	3½%+.60
Zone II	11.85	3½%+.60
EQUIPMENT OP. (includes hellcopter operators)		
Zone I	9.64	3½%+.60
Zone II	11.02	3½%+.60
EQUIPMENT MECHANIC (including hellcopter mechanic & POWDERMAN)		
Zone I	8.93	3½%+.60
Zone II	10.21	3½%+.60
GROUNDMAN-JACKHAMMER OP.		
Zone I	7.21	3½%+.60
Zone II	8.24	3½%+.60
AREA C		
LINEMEN-TECHNICIANS		
Zone I	14.70	3½%+.60
Zone II	15.15	3½%+.60
Zone III	15.30	3½%+.60
Zone IV	15.55	3½%+.60
CABLE SPLICERS		
Zone I	15.05	3½%+.60
Zone II	15.50	3½%+.60
Zone III	15.65	3½%+.60
Zone IV	15.90	3½%+.60
EQUIPMENT OPRS. (Includes hellcopter operator)		
Zone I	13.28	3½%+.60
Zone II	13.68	3½%+.60
Zone III	13.83	3½%+.60
Zone IV	14.08	3½%+.60
POWDERMAN		
Zone I	13.23	3½%+.60
Zone II	13.23	3½%+.60
Zone III	13.38	3½%+.60
Zone IV	13.62	3½%+.60
GROUNDMAN-JACKHAMMER OPRS.		
Zone I	10.44	3½%+.60
Zone II	10.89	3½%+.60
Zone III	11.04	3½%+.60
Zone IV	11.29	3½%+.60

DECISION #NM83-4071	Basic Hourly Rates	Fringe Benefits
MARBLE, TILE AND TERRAZZO WORKERS	$12.90	1.02
MARBLE, TILE AND TERRAZZO FINISHERS	10.89	1.02
MILLWRIGHTS-PILEDRIVERMEN:		
Zone 1	14.95	2.80
Zone 2	16.45	2.80
Zone 3	17.20	2.80
PAINTERS (ZONE I)		
Class-A	11.85	1.90
Class-B	12.20	1.90
Class-C	12.85	1.90
Class-D	12.43	1.90
Class-E	12.18	1.90
Class-F	11.85	1.90
PAINTERS (ZONE II)		
Class-A	8.79	1.19
Class-B	8.935	1.19
Class-C	9.21	1.19
PAINTERS RESIDENTIAL CONST.:		
Bernalillo, Cibola, Rio Arriba, Sandoval, Taos, Santa Fe, and Valencia Counties		
Brush and roller	9.47	1.90
Spray	9.97	1.90
Paperhangers	10.47	1.90
Drywall finishers:		
Ames tool operator	10.05	1.90
Hand finishers	9.80	1.90
Machine texture	8.80	1.90
PLASTERERS	13.23	2.12
PLUMBERS-PIPEFITTERS:		
Area I	16.54	3.43
Area II	17.54	3.43
Area III	19.04	3.43
Specific Area	17.59	3.43
Residential	9.95	1.42
POWER EQUIPMENT OPERATORS:		
RESIDENTIAL AND GENERAL BUILDING CONSTRUCTION:		
Group I	10.98	1.80
Group II	12.07	1.80
Group III	12.15	1.80
Group IV	12.26	1.80
Group V	12.32	1.80
Group VI	12.42	1.80
Group VII	12.52	1.80
Group VIII	13.65	1.80
POWER EQUIPMENT OPERATORS:		
HEAVY CONSTRUCTION;		
Group I	10.93	1.85
Group II	12.02	1.85
Group III	12.10	1.85
Group IV	12.21	1.85

Page 4	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (CONT'D):		
HEAVY CONSTRUCTION:		
Group V	12.27	1.85
Group VI	12.37	1.85
Group VII	12.47	1.85
Group VIII	13.50	1.85
ROOFERS (Building Const.)	10.62	.50
ROOFERS (RESIDENTIAL)	7.96	.50
SHEET METAL WORKERS:		
Zone I-A	17.17	3%+2.96
Zone I-B	20.42	3%+2.96
Zone I-C	20.42	3%+2.96
Zone I-D	20.42	3%+2.96
SHEET METAL WORKERS::		
Zone II-A	13.80	3%+1.55
Zone II-B	15.30	3%+1.55
Zone II-C	16.05	3%+1.55
SPRINKLER FITTERS	16.17	2.83
SOFT FLOOR LAYERS	11.55	1.90
SOUND INSTALLERS:		
SOUNDMAN		
Zone I	12.85	M
Zone II	14.46	M
Zone III	15.10	M
Zone IV	13.45	3%+.61
TECHNICIANS:		
Zone I	10.28	M
Zone II	11.89	M
Zone III	15.10	M
Zone IV	10.76	3%+.61
SOUND INSTALLERS:		
Zone I	8.35	M
Zone II	9.96	M
Zone III	13.17	M
Zone IV	8.74	M
M - 3-1/2% + 1.55		
TRUCK DRIVERS:		
BUILDING CONSTRUCTION		
ZONE I		
Group I	9.93	1.79
Group II	10.20	1.79
Group III	10.28	1.79
Group IV	10.40	1.79
Group V	10.45	1.79
Group VI	10.55	1.79
Group VII	10.65	1.79
Group VIII	10.79	1.79
Group IX	10.94	1.79
ZONE II		
Group I	11.68	1.79
Group II	11.95	1.79
Group III	12.03	1.79
Group IV	12.15	1.79
Group V	12.20	1.79
Group VI	12.30	1.79

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	Basic Hourly Rate	Fringe Benefits
TRUCK DRIVERS (CONT'D)		
BUILDING CONSTRUCTION		
ZONE II		
Group VII	$12.40	1.79
Group VIII	12.54	1.79
Group IX	12.69	1.79
ZONE III		
Group I	12.18	1.79
Group II	12.45	1.79
Group III	12.53	1.79
Group IV	12.65	1.79
Group V	12.70	1.79
Group VI	12.80	1.79
Group VII	12.90	1.79
Group VIII	13.04	1.79
Group IX	13.19	1.79
RESIDENTIAL CONSTRUCTION:		
Group I	9.63	1.79
Group II	9.90	1.79
Group III	9.98	1.79
Group IV	10.10	1.79
Group V	10.15	1.79
Group VI	10.25	1.79
Group VII	10.35	1.79
Group VIII	10.49	1.79
Group IX	10.64	1.79
HEAVY CONSTRUCTION:		
ZONE I		
Group I	10.08	1.54
Group II	10.35	1.54
Group III	10.43	1.54
Group IV	10.55	1.54
Group V	10.60	1.54
Group VI	10.70	1.54
Group VII	10.80	1.54
Group VIII	10.94	1.54
Group IX	11.09	1.54
ZONE II		
Group I	11.38	1.54
Group II	11.50	1.54
Group III	11.58	1.54
Group IV	11.70	1.54
Group V	11.75	1.54
Group VI	11.85	1.54
Group VII	11.95	1.54
Group VIII	12.09	1.54
Group IX	12.24	1.54

	Basic Hourly Rate	Fringe Benefits
TRUCK DRIVERS (CONT'D)		
HEAVY CONSTRUCTION		
ZONE III		
Group I	$11.63	1.54
Group II	11.75	1.54
Group III	11.85	1.54
Group IV	11.95	1.54
Group V	12.00	1.54
Group VI	12.10	1.54
Group VII	12.20	1.54
Group VIII	12.34	1.54
Group IX	12.49	1.54
Aluminum/vinyl facia and soffit installer (residential construction)		
BERNALILLO COUNTY	8.75	

DECISION #NM83-4071 CLASSIFICATION AREAS AND ZONES DEFINITIONS Page 6

ASBESTOS WORKERS:
ZONE I - Statewide, except Union, Lea, Harding, Curry, Roosevelt and Quay Counties.
ZONE II - Union, Lea, Harding, Curry, Roosevelt and Quay Counties

BRICKLAYERS-STONEMASONS:
ZONE 1-A; 1-B and 1-C Union, Harding, Santa Fe, Valencia, Torrance, Taos, Socorro, Mora, McKinley, Colfax, Catron, San Miguel, San Juan, Sandoval, Rio Arriba, Bernalillo, Cibola and Los Alamos Counties
FROM BASINT POINT OF ALBUQUERQUE MAIN POST OFFICE:
Zone 1-A - 0 to 25 road miles
Zone 1-B - 25 to 50 road miles
Zone 1-C - Over 50 road miles
ZONE II - Curry and Roosevelt Counties
ZONE III - DeBaca, Guadalupe and Quay Counties
ZONE IV - Chaves County
ZONE V - Lincoln County
ZONE VIA - Lee and Eddy Counties (except at Mine and Refinery sites outside Municipal Limits)
ZONE VIB - Lee and Eddy Counties (Employees at Mine and Refinery sites outside Municipal Limits)
ZONE VII - Luna and Grant Counties, communities of Silver City, Bayard, Central, Hurley and New town site of Tyrone; Hidalgo, Sierra and Otero Counties.
ZONE VIII - Dona Ana County

CARPENTERS / LATHERS:
STATEWIDE - From nearest basing points of the following cities or towns: Alamogordo, Albuquerque, Artesia, Bayard, Belen, Carlsbad, Clovis, Deming, Espanola, Eunice, Farmington, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Lordsburg, Lovington, Portales, Raton, Roswell, Ruidoso, Santa Fe, Santa Rosa, Silver City, Socorro, Taos and Tucumcari & Cibola:
ZONES I AND II
Zone 1-A and 2-A - 0 to 15 rd. mi. from nearest basing point
Zone 1-B and 2-B - 15 to 35 rd. mi. from nearest basing point
Zone 1-C and 2-C - Over 35 road mi. from nearest basing point
SAN JUAN COUNTY (ONLY)
Zone I - Within 15 rd. mi. of the City of Farmington
Zone II - Over 15 mi. but less than 35 mi. from Farmington
Zone III - 35 miles or more from the city of Farmington

CEMENT MASONS:
AREA I
Statewide, except Farmington, San Juan County
AREA II
Farmington , San Juan County
Zone I - 0-15 miles from Farmington City Hall
Zone II - 15-35 miles from Farmington City Hall
Zone III - 35 miles and over from Farmington City Hall

ELECTRICIANS-CABLE SPLICERS
ZONE I
AREA 1 - Bernalillo, Santa Fe, Torrance, DeBaca, Guadalupe, Quay, San Miguel, Mora, Harding, Union, Colfax, Taos, Rio Arriba, Grant, Sandoval, Valencia, Socorro, Catron, McKinley, Sierra, San Juan, Chaves, Curry, Lincoln, Cibola and Roosevelt Counties.

CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

ELECTRICIANS-CABLE SPLICERS (CONT'd):

AREA 1-A

From nearest basing point cities, towns and mileage from main post office in the following towns:

Albuquerque - 15 miles	Portales - 12 miles
Santa Fe - 10 miles	Carrizozo - 12 miles
Las Vegas - 8 miles	Clovis - 12 miles
Farmington - 6 miles	Gallup - 10 miles
Raton - 6 miles	*Pojoaque - 2 miles
Tucumri - 6 miles	*All areas adjacent to Pojoaque that are over 2 miles distant from the main post office in that town will be zoned out of Santa Fe.
Aztec - 6 miles	
Roswell - 12 miles	
Ruidoso - 12 miles	

AREA 1-B

Extending up to 20 miles beyond Area 1-A

AREA 1-C

Extending up to 30 miles from Area 1-A

AREA 1-D

Extending up to 30 miles from Area 1-A

ZONE II - Los Alamos County

ZONE III - Dona Ana, Otero, Luna, Hidalgo Counties

Zone 3-A - Within 10 miles radius from the Post Office in Las Cruces and within a 5 m. radius from the Post Office in Alamorgordo

Zone 3-B - Dona Ana, Otero, Luna, and Hidalgo Counties (except that area specified in Zone 3-A)

ZONE IV

Eddy and Lea Counties - the following zones shall be designated from the main post office in Artesia, Carlsbad, Hobbs and Lovington

Zone 4-A - 0 to 12 miles	Zone 4-C - 22 to 40 miles
Zone 4-B - 12 to 22 miles	Zone 4-D - Over 40 miles

ELEVATOR CONSTRUCTORS:

AREA I

Bernalillo, Catron, Colfax, Curry, DeBaca, Guadalupe, Harding, Lincoln, Los Alamos, McKinley, Mora, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Socorro, Taos, Torrance, Union, Cibola and Valencia Counties.

AREA II

Chaves, Hidalgo, Dona Ana, Eddy, Grant, Lee, Luna, Otero and Sierra Cos.

IRONWORKERS:

ZONE I

Bernalillo, Catron, Colfax, DeBaca, Guadalupe, Lincoln, Los Alamos, Taos, McKinley, Mora, Rio Arriba, Sandoval, Santa Fe, Socorro, Torrance, Cibola, and Valencia Counties.

ZONE II

FARMINGTON, SAN JUAN COUNTY

Area 1 - Shall extend a distance of 6 road miles inclusive beyond City Hall.

Area 2 - Shall extend a distance of 8 road miles inclusive beyond the outer perimeter of area 1

CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

IRONWORKERS (cont'd)

ZONE II

Area 3 - Shall extend a distance of 10 rd. mi. inclusive beyond the outer limits of area 2

Area 4 - Shall extend a distance of 27 rd. mi. inclusive beyond the outer limits of area 3

Other areas not within area 1, 2, 3 and 4 shall revert to the $15.00 per day subsistence.

ZONE III

Dona Ana County with the exception of that portion of the county that lies within the White Sands Missile Range; Chaves County; Eddy County, except that Potash Basin and defined as the area 10 road miles on Highway 62 and Highway 180, east of Carlsbad.

ZONE IV

Curry, Harding, Quay, Union, Hidalgo, Grant, Lea, Luna, Otero, and Sierra Counties; also Potash Basin, White Sands & McGregor Missile Ranges.

LABORERS ZONE DEFINITIONS FOR BUILDING AND HEAVY CONSTRUCTION:

ZONE I - STATEWIDE including that 15 mile radius from the City Hall in Farmington.

ZONES II AND III FOR LABORERS BUILDING AND HEAVY CONSTRUCTION DEFINITIONS APPLICE TO THE "FARMINGTON AREA ONLY" AS FOLLOWS:

ZONE II - 15-35 miles from the City Hall in Farmington

ZONE III = 35 miles and over from the City Hall in Farmington

BUILDING AND HEAVY LABORERS CLASSIFICATION DEFINITION

GROUP I

UNSKILLED: building and common laborers, carpenter tenders, concrete workers, concrete buggy operators; chain saw operator, demolition

GROUP II

SEMI-SKILLED: air and power tool operator, asphalt rakers gunite rebound men, fog machine op., power buggy op., sandblasters, (potmen), window washers, wagon core, diamond drillers tender outside, pumps under 6"; cutting torch operator

GROUP III

MISCELLANEOUS: Concrete burner, cement mason tenders, hod carriers, mortar mixers, plaster spreader op, plaster tenders, gunite nozzlemen, pipelayers, pumpcrete nozzlemen

GROUP IV

Powderman and blasters

RESIDENTIAL LABORERS CLASSIFICATION DEFINITIONS

GROUP I

Unskilled - building and common laborers, carpenter tenders, concrete workers, concrete buggy operators, hand

GROUP II

Semi-skilled - air and power tool operator, asphalt rakers, demolition, gunnite reboundmen, fog machine operator, power buggy operator, sand blasters (pot men), window washers, wagon core and diamond drillers, tender outside

GROUP III

Concrete burner, cement mason tenders, hod carriers, mortar mixers, plaster spreader operators, plaster tenders, gunnite nozzleman, pipelayer, pumpcrete nozzleman

LEAD BURNERS BASING POINT AND AREA DEFINITIONS

BASING POINT CITIES OR TOWNS:

Albuquerque, Alamorgordo, Anthony, Artesia, Belen, Carlsbad, Clovis, Deming, Espanola, Farmington, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Lovington, Portales, Raton, Socorro, Roswell, Ruidoso, Santa Fe, Silver City, Santa Rosa, Taos, Tucumcari and Truth of Consequence

ZONE I - Shall include a distrnce of 7 rd. mi. inclusive beyond the city or town limits

ZONE II - Shall extend a distance of 4 rd. mi. inclusive beyond the outer perimeter of area I

ZONE III - Shall apply to all areas not within 1 or 2, or not within the specific areas

ZONE IV (SPECIFIC AREA)- Los Alamos, White Rock, South Mesa, McGregor Range, White Sands Missile Range, and/or Proving Grounds.

COMMERCIAL LINE WORK

AREA A

Bernalillo, Colfax, Catron, Cahves, Curry, DeBaca, Grant, Guadalupe, Harding, Lincoln, Los Alamos, McKinley, Mora, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Union, Valencia and White Sands Missile Range and that portion of Fort Bliss in New Mexico

CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

COMMERCIAL LINE WORK (CONT'D)

AREA A

ZONE I

Cities and Towns Basing Points - Miles from Main Post Offices

Albuquerque - 15 miles	Aztec - 6 miles
Santa Fe - 10 miles	Roswell - 12 miles
Las Vegas - 8 miles	Ruidoso - 12 miles
Farmington - 6 miles	Clovis - 12 miles
Raton - 6 miles	Gallup - 12 miles
Tucumari - 6 miles	

*All areas adjacent to Pojoaque that are over two miles distant from the main post office in that town will be zoned out of Santa Fe

ZONE II

Extending up to 20 miles beyond zone 1

ZONE III

Extending up to 30 miles beyond zone 1

ZONE IV

Anything beyond 30 miles from zone 1

Gas Alamos County - Use ZONE III RATES.

AREA B

Applies to switching stations and sub-stations adjacent to power plants in Zone 1 and Zone 2 in Luna, Dona Ana, Otero, and Hidalgo Counties, exclusive of White Sands Missile Range and that portion of Fort Bliss in New Mexico.

ZONE I

That area within 25 miles radius from the downtown Post Office of El Paso, Texas. Fort Bliss and Biggs Field; the area within a five mile radius of any city, town or municipality within which an employer established or maintains his place of business; the area within ten mile radius from the post office in Las Cruces, New Mexico, and within a five mile radius from the post office in Alamogordo, New Mexico.

ZONE II

All other areas of the jurisdiction except those specified in zone 1

AREA C

Applies to switching stations adjacent to power plants in Eddy and Lea Counties; the following zones listed shall be designated from main Post Office of Artesia, Carlsbad, Hobbs and Lovington.

ZONE I - 0-12 miles
ZONE II - 12-22 miles
ZONE III - 22-40 miles
ZONE IV - 40 miles and beyond

MILLWRIGHTS AND PILEDRIVER ZONE DEFINITIONS

BASING POINT - FROM ALBUQUERQUE CITY LIMITS:

ZONE 1-- 0 to 15 road miles from basing point
ZONE 2-- 15 to 35 road miles from basing point
ZONE 3-- Over 35 road miles from basing point

PAINTERS' ZONE AND CLASSIFICATION DEFINITION

ZONE I

San Juan, McKinley, Bernalillo, Torrance, Guadalupe, Quay, Catron, Eddy, Socorro, Lincoln, DeBaca, Roosevelt, Chaves, Valencia, Sierra, Grant, Lea, Hidalgo, Curry, Sandoval, Colfax, Harding, Los Alamos, Mora, San Miguel, Rio Arriba, Taos, Union and Santa Fe Counties

CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

PAINTERS' ZONE AND CLASSIFICATION DEFINITION (cont'd)

ZONE I
CLASS A - Painters, roller and hand textures
CLASS B - Spray, sandblasting, steel and special applicators
CLASS C - Paperhangers
CLASS D - Drywall finisher; ames tool operator
CLASS E - Machine texture ------ CLASS F - Hand texture

ZONE II
Luna, Otero and Dona Ana Counties
CLASS A - Brush, roller, tapers and paperhangers
CLASS B - Steel after erection, power driven, tools and ames tools
CLASS C - Spray, sandblast, swing stage, stripping machine

PLUMBERS-PIPEFITTERS AREA DEFINITIONS

BASING POINT CITIES OR TOWNS:
Alamogordo, Anthony, Artesia, Belen, Carlsbad, Clovis, Deming, Espanola, Farmington, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Lordsburg, Lovington, Portales, Raton, Roswell, Ruidoso, Santa Fe, Silver City, Santa Rosa, Taos, Tucumcari, Truth of Consequence and Socorro, New Mexico.

AREA I
Shall include a distance of seven road miles inclusive beyond the city or town limits

AREA II
Shall extend a distance of four road miles inclusive beyond the outer perimeter of area I.

AREA III
Shall apply to all areas not within areas 1 or 2 or not within the specific area.

SPECIFIC AREA
Los Alamos, White Rock, South Mesa, McGregor Range, White Sands Missile Range and/or Proving Grounds, Atlas Missile Complex Sites in Chaves and Lincoln Counties, and the Oro Grande Range Camp and Dona Ana and Otero Counties.

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

BUILDING, RESIDENTIAL AND HEAVY CONSTRUCTION

GROUP I
Fireman, oiler, screedman, scale op. such as bin-a-batch, rubber tired farm type tractor, tractors under 50 HP w/o attachments, breakman, concrete paving curing machine (bridgetype), helper (mechanic, welder, grease truck)

GROUP II
Rollers, sheepsfoot or pneumatic self-propelled w/o dozer, concrete conveyors, service truck op. (head oiler), air compressor (300 DFM & over), pumps (6" & over), screening plants, concrete mixers (under 1 CY), concrete saw or grinder-span type, 1 drum hoist, air tugger, elevating belt type loaders, forklift, lumber stacker, tractor farm type (under 50 HP w/attachments), motorman and industrial locomotive op., winch truck, front end loaders (under 2 CY), power plants which generate over 15 KW., welding machines

GROUP III
Bituminous distributors, boilers; retort & hot oil heaters, concrete mixers (1 CY & over), conc. paver-single drum, drilling equip.; (refrigeration, slusher, jumbo forms), trenching machines (all types), pumpcrete & gunite machines, slipform paver, mechanical bullfloats, concrete slab spreading machine, conc. slab finishing machine, asphalt plants, bituminous finishing machines, crushing plants

CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (cont'd)

BUILDING, RESIDENTIAL AND HEAVY CONSTRUCTION

GROUP IV
Front end loaders (2 thru 10 CY), rollers steel wheeled-all types, bulldozers, scrapers (motor or towed), elevating graders, concrete batching plants, self-propelled rollers -- equipped w/dozer, twin-bowl scrapers and quad 8 or 9 pushers (35¢ over basic rate, three bowl scraper (60¢ over basic rate).

GROUP V
Hydraulic cranes-with less than 50 feet of boom (20 tons and under), concrete paver-double drum, cat cranes, hysters, side and swingboom cats, 2 drum hoist, auto fine grader

GROUP VI
Mucking machines-all types, motor grader (finish) mechanic welder

GROUP VII
Steam engineers, loader (front end over 10 CY), concrete pump (snorkel type)

GROUP VIII
All shovel type equipment; cranes, draglines, backhoes, derricks, guy & stiff leg, pipemobile (No. 2 operator), piledriver, hydraulic cranes (20 tons & over), mine hoist, belt loader ("C.M.I." Type), boom and jibs 150 ft. through 199 ft. - 25¢ per hour above base pay 200 ft. and over-50¢ per hour above base pay. Shovel (wheel type), boring machine (tunnel or shaft mole), pipe mobile

SHEET METAL WORKERS ZONE AND CLASSIFICATION DEFINITIONS

ZONE I
Bernalillo, Catron, Chaves, Colfax, Curry, DeBaca, Guadalupe, Harding, Lincoln, Los Alamos, McKinley, Mora, Quay, Rio Arribo, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Socorro, Taos, Torrance, Union, Cibola and Valencia Counties.

ZONE IA
Any area within a five mile radius of the city limits of Albuquerque, Santa Fe, Farmington, Roswell and Kirtland AFB, East & West; Rio Rancho; Paradise Hills; An area including ten miles each direction east and west of interstate Highway 25 and extending north and south, terminating with but including, Santa Fe and Belen; an area identified by corner reference points beginning at and including Projoaque, to Chimayo, to Velarde, to Abiquiu and back to Pojoaque; an area identified by corner reference points beginning at and including Farmington to Artec, to Bloomfield and back to Farmington.

ZONE IB - Los Alamos County ZONE IC - San Juan (except that area in Zone
ZONE IC - San Juan (except that area in Zone IA)
ZONE ID - All area not in Zone IA, IB, or IC

ZONE II
Dona Ana, Eddy, Grant, Hidalgo, Lea, Luna, Sierra and Otero Counties.
ZONE IIA - Any area w/in a 5 mile radius of the city limits of Carlsbad, Las Cruces, Artesia, Alamogordo, Hobbs and Sunland Park
ZONE IIB - White Sands, including Holloman, McGregor & Lyndon B. Johnson.
ZONE IIC - All area not in Zone IIA or IIB

CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

SOUND INSTALLERS ZONE DEFINITIONS

ZONE I
Thirty mile radius of main post office in Albuquerque

ZONE II
Remainder of Valencia, Sandoval, Santa Fe, Torrance, and Socorro Counties, the hourly rates of pay shall be increased for twelve and one-half (12½) percent of journeymen rate of pay for ZONE I.

ZONE III
Chaves, Curry, Roosevelt, Lincoln, Guadalupe, DeBaca, Quay, San Miguel, Mora, Harding, Union, Colfax, Taos, Rio Arribo, Catron, Sierra, Grant, Los Alamos, San Juan, McKinley Counties the hourly rates of pay shall be increased by thirty-seven and one-half (37.5) percent of the journeyman rate of pay for ZONE I.

ZONE IV
Eddy and Lea Counties

TRUCK DRIVERS ZONE PAY BASING POINTS AND DEFINITIONS LISTED BELOW FOR BUILDING AND HEAVY CONSTRUCTION - BASING POINTS ARE AS FOLLOWS:
Alamogordo, Albuquerque, Artesia, Bayard, Belen, Carlsbad, Clovis, Deming, Espanola, Eunice, Farmington, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Lordsburg, Lovington, Portales, Raton, Roswell, Ruidoso, Santa Fe, Santa Rosa, Silver City, Socorro, Taos, Tucumcari

ZONE I
Shall be jobs or projects within 15 road miles from the starting points listed above

ZONE II
Shall be jobs or projects which are more than fifteen road miles, but less than thirty-five road miles from base points, also, includes all of Los Alamos County

ZONE III
Shall be those jobs or projects which are thirty-five road miles or more from the base points.

TRUCK DRIVERS CLASSIFICATION DEFINITIONS (BUILDING, HEAVY AND RESIDENTIAL CONSTRUCTION)

GROUP I
Pickup 3/4 ton and under, lubrication, light tire repair and washer, swamper, 2 or 4 and up.

GROUP II
Dump or batch truck under 8 C.Y.W.L.C.; flat bed (bobtail) 2 ton and under; warehouseman including material checker, fork lift under 5 tons M.R.C.

GROUP III
Dump trucks (including all highway and off highway) 8 up to 16 C.Y.W.L.C.; water, fuel or oil trucks less than 3,000 gal., flat bed (bobtail) over 2 tons.

GROUP IV
Distributor driver, heavy tire repair, lumber carrier driver, young buggy or similar equipment, transit mix or agitator 2 or 3 axle bobtail equipment, scissor truck, bulk cement bobtail 2 or 3 axles, semi-trailer flat-bed or van single axle, forklift 5 ton and over M.R.C.

CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

TRUCK DRIVERS CLASSIFICATION DEFINITIONS (BUILDING, HEAVY AND RESIDENTIAL CONSTRUCTION)

GROUP V
Dumpsters and dumpcrete driver; water, fuel or oil truck 3,000 to 6,000 gallons; lowboys and light equipment driver; euclid type tank wagon under 6,000 gallons

GROUP VI
Vacuum truck; dump trucks (including all highway and off-highway 16 up to 22 C.Y.W.L.C.

GROUP VII
Transit mix or agitator semi or 4 axle equipment driver; flaherty truck type spreader box driver; slurry truck driver; bulk cement driver; semi-doubles; 4 axle bobtail; winch truck and "A" frame; dump truck (including all highway and off-highway) 22 CY up to 35 C.Y.W.L.C.

GROUP VIII
Euclid diesel power turnarocker; terra coba-DW20-Le-Tourneau Pulls and similar diesel powered equipment when used to haul materials and assigned to a teamster-lowboy heavy equipment driver; water, fuel or oil trucks 6,000 gallons and over including tank wagon drivers, semi-trailer driver (flat-bed or van tandems); light equipment mechanic; dump trucks (including all highway and off-highway) 35 C.Y.W.L.C. and over; truck and trailer or semi-trailer (flatbed); eject all

GROUP IX
Lowboy (heavy equipment double gooseneck); heavy equipment mechanic; welder (body and fender men)

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day; G-Friday after Thanksgiving.

WELDERS--receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii).

SUPERSEDEAS DECISION

STATE: PENNSYLVANIA
DECISION NO. PA83-3048
COUNTIES: SEE BELOW *
DATE: DATE OF PUBLICATION
Supersedes Decision No. Pa82-3017 dated March 26, 1982, in 47 FR 13108.
DESCRIPTION OF WORK: Building Erection and Foundation Excavation, (does not include single family homes or apartments up to and including 4 stories). Excluding Sewage and Water Treatment Plant Projects.
*Lackawanna, Susquehanna, Wayne and Wyoming.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$16.33	2.31
BOILERMAKERS	19.33	2.415
BRICKLAYERS & STONEMASONS:		
Scranton in Lackawanna County	15.00	2.86
Carbondale in Lackawanna County	15.95	1.90
Susquehanna and Wyoming County	15.70	2.00
CARPENTERS:		
Lackawanna, Susquehanna, and Wayne Counties	14.46	2.50
Wyoming County:		
East of Susquehanna River	14.97	2.50
West of Susquehanna River	14.99	2.25
CEMENT MASONS:		
Wyoming, Wayne, Susquehanna Counties, Scranton in Lackawanna County	15.65	
Carbondale in Lackawanna Counties	15.95	1.90
ELECTRICIANS:		
Lackawanna, Susquehanna and Wayne County	15.25	3.00+3%
Wyoming County:		
East of Susquehanna River	15.25	3.00+3%
West of Susquehanna River	15.99	3.00+3%
ELEVATOR CONSTRUCTORS	15.60	3.00+3%
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	3.00+3%
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR	
GLAZIERS	13.04	2.90
IRONWORKERS:		
Lackawanna, Wayne and Wyoming Cos.		
Structural and Ornamental	17.85	3.70+e
Reinforcing	17.75	3.70+e
Susquehanna County	12.80	

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Lackawanna, Wayne, Susquehanna, and Northern part of Wyoming County:		
Unskilled and Window Cleaners	$12.80	2.67
Semi skilled Laborers: Jackhammer Operators, (each man when two are required for operation of Jackhammer) vibrator and Buster men, Wagon Drill and all men handling Dynamite, Gas Boggies, 2" Pumps and Concrete Mixers (up to 2 bags) and all Pneumatic Tools	12.95	2.67
PLASTER TENDERS & MASONS TENDERS and Handling of all material to be used; Masons and Scaffold Builders	13.20	2.67
NON-METALLIC PIPE LAYERS and making of Joints, Clay, Terra Cotta, Ironstone, Vitrified Concrete Handling of Burning Torches: Asphalt or other material	12.95	2.67
SOUTHERN PART OF WYOMING COUNTY:		
Unskilled	12.87	2.60
Semi skilled laborers; pneumatic and other mechanical tool operator 2" pump or under; Handling and mixing of all material used by Masons from stock pile to Masons Non-matallic Pipelayer & making of Joints, Clay, Terra Cotta, Ironstone,		

DECISION NO. PA83-3048

	Basic Hourly Rates	Fringe Benefits
LABORERS: (CONT'D)		
Vitrified Concrete, Handling of Burning Torches; Asphalt or other Hot material, Cement Finishers and Blasters Helpers	13.07	2.60
Southern part of Wyoming County Plasterers' Tenders; Blasters; Wagon Drill Operators	13.19	2.60
Masons Tenders and Scaffold Builders	13.27	2.60
LATHERS	12.04	2.60
LEAD BURNERS	10.75	.66+c
LINE CONSTRUCTION:		
Lineman; Dynamite man	15.64	.65+3 3/8%
Winch Truck	10.94	.65+3 3/8%
Groundman	10.46	.65+3 3/8%
MARBLE SETTERS	13.60	2.50
MILLWRIGHTS:		
Lackawanna, Susquehanna and Wayne Counties	15.04	2.50
Wyoming County:		
East of Susquehanna River	15.72	2.50
West of Susquehanna River	16.57	2.25
PAINTERS:		
Brush and Roller	13.90	1.20
Spray	15.40	1.20
Steel	14.90	1.20
PILEDRIVERMAN	14.82	6.16+d
PLASTERER	12.63	
PLUMBERS	15.24	3.95
POWER EQUIPMENT OPERATORS:		
GROUP 1	16.24	22.6%+f
GROUP 2	15.95	22.6%+f
GROUP 3	15.07	22.6%+f
GROUP 4	14.30	22.6%+f
GROUP 5	13.82	22.6%+f
GROUP 6	12.90	22.6%+f
GROUP 7	16.49	22.6%+f
GROUP 7-A	16.74	22.6%+f
GROUP 7-B	16.99	22.6%+f

Basic Hourly Rates	Fringe Benefits

POWER EQUIPMENT OPERATORS - CLASSIFICATIONS

Group 1: Machines doing hook work; Any machine handling machinery; Cable spinning machines; Helicopters; Machines similar to the above

Group 2: All types of Cranes; All types of backhoes; Cableways; Dragline; Keystones; All types of shovels; Derricks; Trench shovels; Trenching machines; Hoist with two towers; Pavers, 21E and over; All types of overhead cranes; Building hoists (double drum); Gradalls; Mucking machines in tunnel; All front end loaders, 3½ cu. yds. and over; Tandem scrapers; Pippin type backhoes; Boat captains; Batch plant operators (concrete); Drills; Self-contained rotary drills; Fork lifts, 20 ft. lift and over; machine similar to the above

Group 3: Conveyors; Building hoists (single drum); Scrapers and Tournapulls; Spreaders; High or low pressure boilers; Concrete pumps; Well drillers; Bulldozers and tractors; Asphalt plant engineers; Roller (high grade finishing); Ditch witch type trencher; All loaders under 3½ cu. yds.; Mechanic-welder; Motor patrols; Drill helper-self contained rotary drills; Core drill operator; Forklift trucks, under 20 ft. lift; Machine similar to the above

Group 4: Welding machines; Well points; Compressors; Pumps; Heaters; Farm tractors; Form line gardens; Fine grade machines; Road finishing machines; Concrete breaking machines; Rollers; Seaman pulverizing mixer; Power brooms; Seeding spreaders; Tireman (for power equipment); Machines similar to above

Group 5: Firemen, Grease truck

Group 6: Oilers and deck hands (personnel boats); Core drill helper

Group 7: All machines with booms (including jib, masts, leads, etc.); 150 ft. and over

Group 7-A: 150 ft. and over

Group 7-B: 200 ft. and over

DECISION NO. PA83-3048	Basic Hourly Rates	Fringe Benefits
ROOFERS:		
Composition and Kettlemen	$14.42	2.28
SHEET METAL WORKERS	15.92	2.00
SOFT FLOOR LAYERS:		
Lackawanna, Wayne and Susquehanna Counties	14.46	2.00
Wyoming County	11.94	2.25
SPRINKLER FITTERS	16.92	3.23
PIPEFITTERS	14.79	4.35
TRUCK DRIVERS:		
CLASS I	11.82	
CLASS II	11.89	
CLASS III	12.38	

TRUCK DRIVERS - CLASSIFICATIONS

Class I - Helper; Stack Body Truck (single axle); Dumpster

CLASS II - Dump Trucks; Tandem and Batch Trucks; Semi-trailers; Agitator Mixer Trucks; Ready mix and Dumpcrete type vehicles Asphalt Distributors; Farm Tractor when used for transportation; Stake Body Truck (tandem)

CLASS III - Euclid type; off-highway Equipment - back or Belly Dump Trucks and Double Hitched Equipment; Straddle (Boss) carrier; low-bed Trailers

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidential.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.
b. Paid Holidays: A through F, plus the Friday after Thanksgiving Day.
c. Paid Holidays: A through F and Washington's Birthday, Good Friday; and Christmas Eve, provided the employee has worked 45 days for the employer during the 120 days prior to the holiday and is avialable for work the days preceding and following the holiday.
d. Paid Holidays: Washington's Birthday, Good Friday, Memorial Day, Labor Day; Presidential Election Day; Veterans' Day, Thanksgiving Day.
e. Employer contributes $3.70 to a combined Health and Welfare and Pension Fund.
f. Paid Holidays: New Year's Day, Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Christmas Day, provided the employee works the day before and after the holiday.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))."

SUPERSEDEAS DECISION

STATE: WISCONSIN COUNTIES: SEE BELOW *
DECISION NUMBER: WI83-2078 DATE: Date of Publication
Supersedes Decision No. WI82-2011 dated March 19, 1982 in 47 FR 12029
DESCRIPTION OF WORK: Building Construction (excluding Single Family homes and apartments up to and including 4 stories); Dane County only (includes single family homes and apartments up to and including 4 stories)
*Columbia, Dane, Iowa, and Sauk

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.10	2.94
BOILERMAKERS	16.12	2.825
BRICKLAYERS	13.89	2.69
CARPENTERS: SOFT FLOOR LAYERS	13.66	2.11
CEMENT MASON:		
Columbia & Sauk Cos.	14.45	1.85
Dane and Iowa Cos.	14.60	2.85
ELECTRICIANS	15.54	1.33+ 123/4%
ELEVATOR CONSTRUCTORS:		
Constructors	15.22	2.465
Helpers	10.65	2.465
Helpers (Prob.)	7.61	
GLAZIERS	15.08	1.58
IRONWORKERS	14.08	2.95
LINE CONSTRUCTION:		
Lineman	15.47	65+9½%
Heavy Equipment Op.	13.92	65+9½%
Light Equipment Op.	12.38	65+9½%
Heavy Groundman Truck-driver	10.83	65+9½%
Light Groundman Truck-driver	10.06	65+9½%
Groundman	8.51	65+9½%
MILLWRIGHTS & PILEDRIVER-MEN	14.06	2.11
PAINTERS:		
Brush & Structural Steel	13.10	1.81
Spray and Sandblaster	14.10	1.81
PLASTERERS:		
Dane & Iowa Cos.	12.90	2.85
Sauk & Columbia Cos.	14.45	1.85
PLUMBERS	13.55	2.95
ROOFERS	15.34	1.50
SHEET METAL WORKERS	17.06	2.43
TERRAZZO WORKERS		
Dane & Iowa Cos.	14.45	1.85
TILE SETTERS		
Dane & Iowa Cos.	14.45	1.85

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Single or Tandem Axle	10.40	246.15 per mo
LABORERS:		
General	12.17	1.43
Mortar Mixers	12.32	1.43
AIR HAMMER & PLASTERER LABORERS	12.42	1.43
POWER EQUIPMENT OPERATORS:		
GROUP I	15.22	2.90
GROUP II	14.92	2.90
GROUP III	14.56	2.90
GROUP IV	14.44	2.90
GROUP V	13.88	2.90
GROUP VI	13.41	2.90

POWER EQUIPMENT OPERATORS (Classifications)

Group 1: Cranes, Shovels, Draglines, Backhoes, Clamshells, Derricks, Caisson Rigs, Pile Driver, Skid Rigs, Derrick Operator and Traveling Cranes (bridge type), Concrete Paver (over 27E), Concrete Spreader and Distributor

Group 2: Material Hoists, Tractor or Truck mounted Hydraulic Backhoe, Tractor or Truck mounted Hydraulic Crane (5 tons and under), Manhoist, Tractor (over 40 H.P.), Bulldozer (H.P.), Endloader (over 40 H.P.), Forklift (25' and over), Motor Patrol, Scraper Operator, Sideboom, Straddle Carrier, Mechanic and Welder, Bituminous Plant and Paver Operator, Roller (over 5 tons), Rotary Drill Operator and Blaster, Trencher (Wheel type or chain type having over 8 inch bucket)

Group 3: Concrete and Group Pumps, Backfiller, Concrete Auto Breaker (large), Concrete Finishing Machine (road type), Roller (rubber tire), Concrete Batch Hopper, Concrete Conveyor Systems, Concrete Mixers (14S or over), Screw type Pumps, and Gypsum Pumps, Tractor, Bulldozer, Endloader (under 40 H.P.), Pumps (Well Points), Trencher (chain type having bucket 8 inch and under), Industrial Locomotives, Roller (under 5 tons) and Firemen (Pile Drivers and Derricks)

Group 4: Hoists (automatic), Forklift (12' to 25'); Tampers-Compactors (riding type), Assistant Engineer, "A" Frame and Winch Trucks, Concrete-Auto Breaker, Hydro-Hammer (small), Booms and Sweeper, Hoists (Tuggers) Stump Chipper (large), Boats, Safety, Work, Barges and Launch

Group 5: Shouldering Machine Operator, Screed Operator, Farm or Industrial Tractor mounted equipment, Post Hole Diggers, Stone Crusher and Screening Plants, Firemen (Aphalt Plants), Air Compressor (300 CFR or over)

Group 6: Generators over 150 KW, Pumps over 3", Augers (vertical and horizontal), Combination small equipment Operator; Air, Electric Hydraulic Jacks (Slip Form), Compressors (under 300 CFM); Welding Machines, Heaters (mechanical), Prestress Machines, Bobcats, Generators (under 150 KW), Pumps (3" and under); Winches (small electric), Oiler and Greaser, Boiler Operators (temporary heat), Rotary Drill Helpers, Conveyors, Forklift (12' and over)

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))

SUPERSEDEAS DECISION

STATE: WISCONSIN COUNTIES: SEE BELOW *
DECISION NUMBER: WI83-2079 DATE: Date Of Publication
Supersedes Decision No. WI82-2015 dated March 12, 1982 in 47 FR 10965
DESCRIPTION OF WORK: Building Construction including Residential
*Chippewa, Eau Claire, and Pepin

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$17.08	2.93
BOILERMAKERS	16.12	2.825
BRICKLAYERS	15.90	1.54
CARPENTERS, LATHERS, & SOFT FLOOR LAYERS	13.66	2.11
CEMENT MASONS	15.90	1.54
ELECTRICIANS	15.48	15%
ELECTRICIANS, RESIDENTIAL	9.61	1.24+7%
ELEVATOR CONSTRUCTORS	16.43	2.465
Helpers	11.50	2.465
Probationary Helpers	8.215	
IRONWORKERS	16.05	2.54
GLAZIERS	17.65	1.31
LABORERS:		
General	12.22	1.68
Mason Tenders	12.47	1.68
Jackhammer Operator	12.52	1.68
LINE CONSTRUCTION:		
Linemen	15.47	.65+9%
Heavy Equipment Operators	13.92	.65+9%
Light Equipment Operators	12.38	.65+9%
Heavy Groundman - Truck Drivers	10.36	.65+9%
Light Groundman - Truck Drivers	10.06	.65+9%
Groundmen	8.51	.65+9%
MILLWRIGHTS & PILEDRIVERMEN	14.06	2.11
PAINTERS:		
Brush	13.00	.15+5%
Spray and Sandblasting	13.50	.15+5%
Structural Steel	14.00	.15+5%
CARPENTERS RESIDENTIAL	9.33	1.71
PLUMBERS & STEAMFITTERS	14.17	3.65
ROOFERS	14.27	
SHEET METAL WORKERS	15.94	1.68
TRUCK DRIVERS:		
2 Axle	12.30	50.00 per wk
3 or more Axles	12.40	50.. per wk

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS		
GROUP I	15.22	2.90
GROUP II	14.92	2.90
GROUP III	14.56	2.90
GROUP IV	14.44	2.90
GROUP V	13.88	2.90
GROUP VI	13.41	2.90
PLUMBERS RESIDENTIAL	10.95	3.65

POWER EQUIPMENT OPERATORS (Classifications)

Group 1: Cranes, Shovels, Draglines, Backhoes, Clamshells, Derricks, Caisson Rigs, Pile Driver, Skid Rigs, Derrick Operator and Traveling Cranes (bridge type), Concrete Paver (over 27E), Concrete Spreader and Distributor

Group 2: Material Hoists, Tractor or Truck mounted Hydraulic Backhoe, Tractor or Truck mounted Hydraulic Crane (5 tons and under), Manhoist, Tractor (over 40 H.P.), Bulldozer (H.P.), Endloader (over 40 H.P.), Forklift (25' and over), Motor Patrol, Scraper Operator, Sideboom, Straddle Carrier, Mechanic and Welder, Bituminous Plant and Paver Operator, Roller (over 5 tons), Rotary Drill Operator and Blaster, Trencher (Wheel type or chain type having over 8 inch bucket)

Group 3: Concrete and Group Pumps, Backfiller, Concrete Auto Breaker (large), Concrete Finishing Machine (road type), Roller (rubber tire), Concrete Batch Hopper, Concrete Conveyor Systems, Concrete Mixers (14S or over), Screw type Pumps, and Gypsum Pumps, Tractor, Bulldozer, Endloader (under 40 H.P.), Pumps (Well Points), Trencher (chain type having bucket 8 inch and under), Industrial Locomotives, Roller (under 5 tons) and Firemen (Pile Drivers and Derricks)

Group 4: Hoists (automatic), Forklift (12' to 25'); Tampers-Compactors (riding type), Assistant Engineer, "A" Frame and Winch Trucks, Concrete-Auto Breaker, Hydro-Hammer (small), Booms and Sweeper, Hoists (Tuggers) Stump Chipper (large), Boats, Safety, Work, Barges and Launch

Group 5: Shouldering Machine Operator, Screed Operator, Farm or Industrial Tractor mounted equipment, Post Hole Diggers, Stone Crusher and Screening Plants, Firemen (Aphalt Plants), Air Compressor (300 CFR or over)

Group 6: Generators over 150 KW, Pumps over 3", Augers (vertical and horizontal), Combination small equipment Operator; Air, Electric Hydraulic Jacks (Slip Form), Compressors (under 300 CFM); Welding Machines, Heaters (mechanical), Prestress Machines, Bobcats, Generators (under 150 KW), Pumps (3" and under); Winches (small electric), Oiler and Greaser, Boiler Operators (temporary heat), Rotary Drill Helpers, Conveyors, Forklift (12" and over)

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))

SUPERSEDEAS DECISION

STATE: WISCONSIN COUNTY: Green & Rock
DECISION NUMBER: WI83-2080 DATE: Date of Publication
Supersedes Decision No. WI82-2016, dated March 12, 1982 in 47 FR 10966
DESCRIPTION OF WORK: Building construction (excluding single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$17.10	2.94
BOILERMAKERS	16.12	2.825
BRICKLAYERS & STONEMASONS	13.83	2.45
CARPENTERS & SOFT FLOOR LAYERS	15.39	2.41
Millwrights	15.99	2.41
Piledrivermen	15.54	2.41
CEMENT MASONS	14.60	2.85
ELECTRICIANS	15.58	.72+ 13.2%
ELEVATOR CONSTRUCTORS:		
Southern Portion	17.025	2.435
Northern Portion	15.22	2.435
ELEVATOR CONSTRUCTORS: HELPERS:		
Southern Portion	11.92	2.435
Northern Portion	10.65	2.435
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)		
Southern Portion	8.51	
Northern Portion	7.61	
GLAZIERS:		
Northern 2/3 of Cos.	15.08	1.58
Southern 1/3 of Cos.	13.43	2.79
IRONWORKERS:		
Vic. of Edgerton, Milton, Pollville & Evansville	14.08	2.85
Vic. of Jonesville, Shapier	17.00	4.375
LABORERS:		
General	11.37	1.43
Mortar Mixers	11.62	1.43
LINE CONSTRUCTION:		
Linemen	15.47	.65+ 9⅓%
Heavy Equipment Op.	13.92	.65+ 9⅓%
Light Equipment Op.	12.38	.65+ 9⅓%
Heavy Groundman Truck Driver	10.83	.65+ 9⅓%
Light Groundman Truck Driver	10.06	.65+ 9⅓%
Groundman	8.51	.65+ 9⅓%
PAINTERS:		
Brush	13.10	1.75
Structural Steel, Spray	14.10	1.75
Swing Stage	13.35	1.75
PLASTERERS	12.90	2.85
PLUMBERS & STEAMFITTERS	17.25	2.21
ROOFERS	16.97	1.68
SHEET METAL WORKERS	16.80	3%+ 2.02
TILE SETTERS	13.83	2.47
POWER EQUIPMENT OPERATORS:		
Group 1	15.22	2.90
Group 2	14.92	2.90
Group 3	14.56	2.90
Group 4	14.44	2.90
Group 5	13.88	2.90
Group 6	13.41	2.90

DECISION NO. WI83-2080 Page 2

POWER EQUIPMENT OPERATORS (Classifications)

Group 1: Cranes, Shovels, Draglines, Backhoes, Clamshells, Derricks, Caisson Rigs, Pile Driver, Skid Rigs, Derrick Operator and Traveling Cranes (bridge type), Concrete Paver (over 27E), Concrete Spreader and Distributor

Group 2: Material Hoists, Tractor or Truck mounted Hydraulic Backhoe, Tractor or Truck mounted Hydraulic Crane (5 tons and under), Manhoist, Tractor (over 40 H.P.), Bulldozer (H.P.), Endloader (over 40 H.P.), Forklift (25' and over), Motor Patrol, Scraper Operator, Sideboom, Straddle Carrier, Mechanic and Welder, Bituminous Plant and Paver Operator, Roller (over 5 tons), Rotary Drill Operator and Blaster, Trencher (Wheel type or chain type having over 8 inch bucket)

Group 3: Concrete and Group Pumps, Backfiller, Concrete Auto Breaker (large), Concrete Finishing Machine (road type), Roller (rubber tire), Concrete Batch Hopper, Concrete Conveyor Systems, Concrete Mixers (14S or over), Screw type Pumps, and Gypsum Pumps, Tractor, Bulldozer, Endloader (under 40 H.P.), Pumps (Well Points), Trencher (chain type having bucket 8 inch and under), Industrial Locomotives, Roller (under 5 tons) and Firemen (Pile Drivers and Derricks)

Group 4: Hoists (automatic), Forklift (12' to 25'); Tampers-Compactors (riding type), Assistant Engineer, "A" Frame and Winch Trucks, Concrete-Auto Breaker, Hydro-Hammer (small), Booms and Sweeper, Hoists (Tuggers) Stump Chipper (large), Boats, Safety, Work, Barges and Launch

Group 5: Shouldering Machine Operator, Screed Operator, Farm or Industrial Tractor mounted equipment, Post Hole Diggers, Stone Crusher and Screening Plants, Firemen (Aphalt Plants), Air Compressor (300 CFR or over)

Group 6: Generators over 150 KW, Pumps over 3", Augers (vertical and horizontal), Combination small equipment Operator; Air, Electric Hydraulic Jacks (Slip Form), Compressors (under 300 CFM); Welding Machines, Heaters (mechanical), Prestress Machines, Bobcats, Generators (under 150 KW), Pumps (3" and under); Winches (small electric), Oiler and Greaser, Boiler Operators (temporary heat), Rotary Drill Helpers, Conveyors, Forklift (12" and over)

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))

SUPERSEDEAS DECISION

STATE: WISCONSIN COUNTIES: SEE BELOW *
DECISION NUMBER: WI83-2077 DATE: Date of Publication
Supersedes Decision No. WI82-2009 dated March 5, 1982 in 47 FR 9690
DESCRIPTION OF WORK: Building Construction (excluding single family homes and apartments up to and including 4 stories)
*Calumet, Fond Du Lac, Manitowoc, Outagamie, and Sheboygan

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$17.56	1.80
BOILERMAKERS	16.12	2.825
BRICKLAYERS	12.75	2.09
CARPENTERS	13.66	2.11
PILEDRIVERS & MILLWRIGHTS	14.06	2.11
CEMENT MASONS	12.25	2.09
ELECTRICIANS:		
Calumet & Outagamie Cos.	15.45	2.55+6%
Manitowoc Co.	15.85	2.90+9%
Fond Du Lac & Sheboygan Cos.	15.02	2.04+14%
ELEVATOR CONSTRUCTORS:		
Outagamie Co. Constructor	16.005	2.465
Helpers	11.20	2.465
Helpers (Prob.)	50%JR	
Remainder of Counties:		
Constructors	17.09	2.69
Helpers	11.96	2.69
Helpers (Prob.)	8.545	
GLAZIERS	12.98	3.13
IRONWORKERS:		
Western part of Fond Du Lac and Outagamie Cos.	14.08	2.85
Remainder of Area	14.81	5.55
LABORERS:		
General Laborers	11.03	1.43
Mason Tender & Plaster Tender	11.13	1.43
Jack Hammer	11.28	1.43
LATHERS	12.61	3.16
PAINTERS:		
Fond Du Lac, Outagamie & N.W. Corner of Calumet County:		
Brush	13.35	1.55
Structural Steel	14.10	1.55
Spray & Swing Stage	13.85	1.55
Manitowoc and Remainder of Calumet Counties:		
Brush	12.10	
Spray	12.60	
Sheboygan County:		
Brush	10.40	1.60
Spray	10.90	1.60
PLASTERERS	12.75	2.15
PLUMBERS & STEAMFITTERS:		
Outagamie Co. and the Northwestern Corner of Calumet County	17.45	2.90
Manitowoc Co. and the Northeastern Part of Calumet County	14.42	2.76
Fond Du Lac; Sheboygan & the Remainder of Calumet County	14.97	3.09
ROOFERS:		
Calumet & Manitowoc Cos.	13.93	1.17
Sheboygan Co.	13.50	1.17
Fond Du Lac County	13.10	2.95
Outagamie County	12.40	1.70
SHEET METAL WORKERS:		
Outagamie County	13.66	5.27
Remainder of Counties	15.60	3.30
TERRAZZO WORKERS & TILE SETTERS	12.75	2.15
POWER EQUIPMENT OPERATORS:		
GROUP I	15.22	2.90
GROUP II	14.92	2.90
GROUP III	14.56	2.90
GROUP IV	14.46	2.90
GROUP V	13.88	2.90
GROUP VI	13.41	2.90

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))

[FR Doc. 83-27196 Filed 10-6-83; 8:45 am]

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federal register

Friday
October 7, 1983

Part IV

Environmental Protection Agency

Environmental Standards for Uranium and Thorium Mill Tailings at Licensed Commercial Processing Sites; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 192

[AD-FRL-2431-8]

Environmental Standards for Uranium and Thorium Mill Tailings at Licensed Commercial Processing Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: These are final health and environmental standards to govern stabilization and control of byproduct materials (primarily mill tailings) at licensed commercial uranium and thorium processing sites. These standards were developed pursuant to Section 275 of the Atomic Energy Act (42 U.S.C. 2022), as added by Section 206 of Pub. L. 95-604, the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA).

The standards apply to tailings at locations that are licensed by the Nuclear Regulatory Commission (NRC) or the States under Title II of the UMTRCA. The standards for disposal of tailings require stabilization so that the health hazards associated with tailings will be controlled and limited for at least one thousand years. They require that disposal be designed to limit releases of radon to 20 picocuries per square meter per second, averaged over the surface of the disposed tailings, and require measures to avoid releases of radionuclides and other hazardous substances from tailings to water. The standards for tailings at operating mills, prior to final disposal, add two elements and a measure of radioactivity to the ground water protection requirements now specified under the Solid Waste Disposal Act, as amended. Existing EPA regulations and Federal Radiation Protection Guidance currently applicable to tailings remain unchanged. The Agency will monitor continuing development of technical and economic information as the Department of Energy proceeds with disposal of the inactive tailings piles, and revise these standards if this information suggests that modifications are warranted.

This notice summarizes the comments received on proposed standards published on April 29, 1983, and provides a summary of the Agency's consideration of major comments. Detailed responses to comments are contained in the Final Environmental Impact Statement.

DATE: These final standards take effect on December 6, 1983.

ADDRESSES: *Background Documents*—Background information is given in the Final Environmental Impact Statement for Standards for the Control of Byproduct Materials from Uranium Ore Processing (40 CFR Part 192), EPA 520/1-83-008 (FEIS) and the Regulatory Impact Analysis of Environmental Standards for Uranium Mill Tailings at Active Sites, EPA 520/1-83-010 (RIA). Single copies of the FEIS and the RIA, as available, may be obtained from the Program Management Office (ANR-458), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460; telephone number (703) 557-9351.

Docket: Docket Number A-82-26 contains the rulemaking record. The docket is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-130), West Tower Lobby, Gallery I, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Russell, Guides and Criteria Branch (ANR-460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460; telephone number (703) 557-8224.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 8, 1978, Congress enacted Pub. L. 95-604, the Uranium Mill Tailings Radiation Control Act of 1978 (henceforth designated "UMTRCA"). In the Act, Congress stated its finding that uranium mill tailings "* * * may pose a potential and significant radiation health hazard to the public, * * * and * * * that every reasonable effort should be made to provide for stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings." The Administrator of the Environmental Protection Agency (EPA) was directed to set "* * * standards of general application for the protection of the public health, safety, and the environment * * *" to govern this process of stabilization, disposal, and control.

UMTRCA established two programs to protect public health, safety, and the environment from uranium mill tailings, one for certain designated sites which are now inactive (i.e., at which all milling has stopped and which are not under license) and another for active sites (those sites licensed by the Nuclear Regulatory Commission (NRC) or the State in which the site is located, when this State is an Agreement State of the NRC under Section 274 of the Atomic Energy Act).

Tailings at the inactive uranium milling sites are defined in UMTRCA as residual radioactive materials. The program for inactive sites covers the disposal of tailings and the cleanup of onsite and offsite locations contaminated with tailings. Final cleanup and disposal standards for the inactive sites were published by EPA on January 5, 1983 (48 FR 590). The U.S. Department of Energy (DOE) is responsible for carrying out these activities in conformance with these standards, with the concurrence of the NRC, and in cooperation with the States.

Tailings at active uranium milling sites are defined in UMTRCA as uranium byproduct materials. The program for active sites covers the final disposal of tailings and the control of effluents and emissions during and after milling operations. UMTRCA requires EPA to establish standards for this program, and that standards for nonradioactive hazards protect human health and the environment in a manner consistent with standards established under Subtitle C of the Solid Waste Disposal Act, as amended (SWDA). The NRC or the licensing Agreement State is responsible for assuring compliance with the standards at active mill sites.

On January 4, 1983, Congress amended UMTRCA to provide additional guidance on the matters to be considered in establishing these standards and to establish new deadlines for their promulgation: "In establishing such standards, the Administrator shall consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate." The Act (Pub. L. 96-415) established a deadline of October 1, 1983 for promulgation of the standards. These final standards conform to the above requirements.

II. Summary of the Final Rule

This final rule modifies and clarifies some of the provisions of the proposed standards because of information obtained during the comment period and at public hearings (May 31, 1983, in Washington, and June 15-16, 1983, in Denver).

EPA received a wide range of comments on the proposed standards and the supporting documents. Several hundred letters were received and 34 individuals testified and/or submitted

comments at the public hearings. Comments were received from a broad spectrum of participants, including private citizens, public interest groups, members of the scientific community, representatives of industry, and State and Federal agencies. EPA has carefully reviewed and considered these comments in preparing the FEIS, the RIA, and in developing these final standards. EPA's responses to major comments are discussed in this "preamble" and comments are discussed in detail in the FEIS. Section III of this preamble summarizes the major considerations upon which these standards are based, and in Section IV we discuss the major issues raised in public comments, our responses to them, and the specific changes in the standards that resulted from our consideration of public comments.

These standards are divided into two parts. The first part applies to management of tailings during the active life of the pile, and during the subsequent "closure period," i.e., after cessation of operations but prior to completion of final disposal, including the period when the tailings are drying out. These are standards that govern milling operations.

The second part specifies the conditions to be achieved by final disposal. Those standards guide the activities carried out during the closure period to assure adequate final disposal. They are standards that govern the design of disposal systems.

The major provisions of the final rule are summarized in the following list, with changes from the proposed rule noted. The final rule:

(1) Applies to management and disposal of byproduct materials at sites where ore is processed primarily to recover its uranium or thorium content.

(2) Applies to the regulatory activities of NRC and the States that license uranium or thorium mills.

(3) Requires that ground water be protected from uranium tailings to background or drinking water levels to preserve its future uses by incorporating the Solid Waste Disposal Act (SWDA) rules.

(4) Requires that disposal of uranium tailings piles be designed so that, after disposal, radon emissions will be limited to 20 picocuries per square meter per second.

(5) Requires that the disposal of uranium tailings be designed to maintain its integrity, in most cases, for at least 1000 years.

(6) Requires liners be used for ground water protection.

(7) Permits the regulatory agency to issue alternate ground water standards when the normally required levels will be satisfied no further from the edge of tailings than the site boundary, or within 500 meters of the tailings, whichever is less (instead of requiring EPA concurrence, as proposed).

(8) Requires corrective action to restore groundwater to its background quality to be in place within 18 months of a determination of noncompliance (instead of the proposed 12 months).

(9) Requires equivalent levels of protection for wet sites (where precipitation exceeds evapotranspiration) as for dry sites (by deleting the exception permitting a nonpermeable cap at wet sites).

(10) Requires the same level of protection at all sites regardless of current local populations.

(11) Establishes equivalent requirements for thorium byproduct materials.

III. Summary of Background Information

A. The Uranium Industry

The major deposits of high-grade uranium ores in the United States are located in the Colorado Plateau, the Wyoming Basins, and the Gulf Coast Plain of Texas. Most ore is mined by either underground or open-pit methods. At the mill the ore is first crushed, blended, and ground to the proper size for the leaching process which extracts uranium. Several leaching processes are used, including acid, alkaline and a combination of the two. After uranium is leached from the ore it is concentrated from the leach liquor through ion exchange or solvent extraction. The concentrated uranium is then stripped or extracted from the concentrating medium, precipitated, dried, and packaged. The depleted ore, in the form of tailings, is pumped to a tailings pile as a slurry mixed with water.

Since the uranium content of ore averages only about 0.15 percent, essentially all the bulk of ore mined and processed is contained in the tailings. These wastes contain significant quantities of radioactive uranium decay products, including thorium-230, radium-226, and decay products of radon-222. Tailings can also contain significant quantities of other hazardous substances, depending upon the source of the ore and the reagents used in the milling process. Most of the tailings are a sand-like material and, because such materials are attractive for use in construction and soil conditioning, have been improperly used in the past, thereby contributing to spreading the radioactive materials offsite. Tailings materials are also subject to wind and water erosion, which may spread radioactive materials offsite.

As of January 1983, there were 27 licensed uranium mills, of which only 14 were operating. By early 1983, the amount of stored tailings had reached about 175 million metric tons (MT). The size of individual tailings piles ranges from about 2 million MT to about 30 million MT.

The future demand for uranium is projected to be almost exclusively for electrical power generation. Based on recent DOE projections, it is estimated that at least an additional 175 million MT of tailings will be generated by the year 2000 in the United States. This projection is for the conventional milling of uranium described above. A small quantity of uranium is also recovered as a secondary product in the extraction of other minerals, such as phosphate and copper, and also by solution (*in situ*) mining methods. Foreign sources of uranium may also influence demand projections for the domestic uranium industry, especially since some foreign deposits are richer in uranium, which permits lower pricing.

The United States Government purchased large quantities of uranium, primarily for use in defense programs, from 1943 to 1970. Many of the producers of this uranium continued operating after 1970 to supply the commercial demand for uranium. In most cases the tailings from Government and commercial purchases were mixed and stored in the same pile. These mixed tailings are now referred to as "commingled" tailings. There are about 51 million MT of defense-related tailings commingled with approximately 74 million MT of other tailings at 13 of the sites which are now licensed for milling uranium ore.

B. Hazards Associated with Uranium Byproduct Materials

The most important of the hazardous constituents of uranium mill tailings is radium, which is radioactive. We estimate that currently existing tailings at the licensed sites contain a total of about 90,000 curies [1] of radium. Radium, in addition to being hazardous itself, produces radon, a radioactive gas whose decay products can cause lung cancer. Because of the long life of thorium-230 (about 75,000 years half-life), the amount of radium in tailings, and therefore, the rate at which radon is produced, will decay to about 10 percent of the current amount in several

[1] A curie is the amount of radioactive material that produces 37 billion nuclear transformations (e.g., disintegrations of radium into radon) per second.

hundred thousand years. Other potentially hazardous constituents of tailings include arsenic, molybdenum, selenium, uranium, and, usually in lesser amounts, a variety of other toxic substances. The concentrations of all of these materials vary from pile to pile.

The radioactivity and toxic materials in tailings may cause cancer and other diseases, as well as genetic damage and teratogenic effects. More specifically, tailings are hazardous to man primarily because: (1) Radioactive decay products of radon may be inhaled and increase the risk of lung cancer; (2) individuals may be exposed to gamma radiation from the radioactivity in tailings; and (3) radioactive and toxic materials from tailings may be ingested with food or water. Our analysis shows the first of these hazards to be by far the most important.

As noted above, the radiation hazard from tailings lasts for many hundreds of thousands of years, and some nonradioactive toxic chemicals persist indefinitely. The hazard from uranium tailings therefore must be viewed in two ways. Tailings pose a present hazard to human health. Beyond this immediate but generally limited health threat, the tailings are vulnerable to human misuse and to dispersal by natural forces for an essentially indefinite period. In the long run the future risks to health of indefinitely-extended contamination from misused and dispersed tailings due to inadequate control overshadows the short-term danger to public health. The congressional report accompanying UMTRCA recognized the existence of long-term risks, and expressed the view that the methods used for disposal should not be effective for only a short period of time. It stated: "The committee believes that uranium mill tailings should be treated * * * in accordance with the substantial hazard they will present until long after existing institutions can be expected to last in their present forms * * *" and, in commenting on the Federally-funded program to clean up and dispose of tailings at the inactive sites, it stated "The committee does not want to visit this problem again with additional aid. The remedial action must be done right the first time." (H.R. Rep. No. 1480, 95th Cong., 2nd Sess., Pt. I, p. 17, and Pt. II, p. 40 (1978).)

For the purpose of establishing standards for the protection of the general public from radiation, we assume a linear, nonthreshold dose-effect relationship as a reasonable basis for estimating risks to health. This means we assume that any radiation dose poses some risk and that the risk of low doses is directly proportional to the risk that has been demonstrated at higher doses. We recognize that the data available preclude neither a threshold for some types of damage below which there are no harmful effects, nor the possibility that low doses of gamma radiation may be less harmful to people than the linear model implies. However, the major radiation hazard from tailings arises not from gamma radiation, but rather is due to alpha radiation from inhaled radon decay products. As pointed out by the National Academy of Sciences' (NAS) Advisory Committee on the Biological Effects of Ionizing Radiation (the BEIR Committee) in its 1980 report, for "* * * radiation, such as from internally deposited alpha-emitting radionuclides, the application of the linear hypothesis is less likely to lead to overestimates of risk, and may, in fact, lead to underestimates."

Our quantitative estimates of the risk due to inhalation of radon decay products are based on our review of epidemiological studies, conducted in the United States and in other countries, of underground miners of uranium and other metals who have been exposed to radon decay products. We have also considered reports by scientific groups, such as *Health Effects of Alpha Emitting Particles in the Respiratory Tract (1976)* and *The Effects on Populations of Exposure to Low Levels of Ionizing Radiation* (1980) by the NAS; the report of the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR) entitled *Sources and Effects of Ionizing Radiation* (1977); Report No. 32, *Limits for Inhalation of Radon Daughters by Workers* (1981) of the International Commission on Radiological Protection (ICRP); and *Risk Estimates for the Health Effects of Alpha Radiation*, by D.C. Thomas and K.G. McNeill (1982), a detailed review prepared for the Atomic Energy Control Board of Canada (AECB). Details of our risk estimates are provided in a previous EPA report, *Indoor Radiation Exposure Due to Radium-226 in Florida Phosphate Lands* (EPA 520/4-78-013), and in the FEIS.

Although the studies of underground miners show that there is a significant risk of lung cancer from exposure to radon decay products, there is uncertainty in its magnitude. Our estimates of the risk due to inhalation of radon decay products exceed those of the ICRP and UNSCEAR by a factor of at least two. However, neither group considered continuous exposure for the duration of a person's lifetime nor documented that they properly projected the risk observed to date in groups of underground miners over the balance of their expected lifetimes. These factors were explicitly considered by the 1980 NAS BEIR Committee. Although the NAS Methodology differs from that employed by EPA, their numerical estimates of risk due to lifetime exposure are essentially identical to those of EPA. The most recent and complete assessment of the miner data, that performed for the AECB, yields a result within 20 percent of the EPA value. Numerical estimates of risk by various other observers differ by up to a factor of eight. We also considered the views of these other observers and discuss their results in the FEIS.

The uncertainties in risk estimates for exposure of miners to radon decay products arise from several sources. Exposures of miners were estimated from the time spent in each location in a mine and the measured radon decay product levels at those locations. However, radon decay product measurements were infrequent and often nonexistent for exposures of miners prior to the 1960's. The uncertainty increases when data for miners are used to estimate risk to members of the general public, because there are differences in age, physiology, exposure conditions, and other factors between the two populations.

We must also make numerous assumptions to estimate the radiation dose to individuals and population groups due to uranium mill tailings, and these introduce additional uncertainties. For example, we make risk estimates for individuals who are assumed to reside at the same location for their life spans, and we further assume that people will continue to have the same life expectancy as the U.S. population did in 1970. Nevertheless, we believe the information available supports estimates of risk which are sufficiently reliable to provide an adequate basis for these proposed standards.

It is not possible to reduce the risk to zero for people exposed to radiation or, for that matter, to many other carcinogens. To decide on a reasonable level of incremental residual risk, we evaluated the practicality and benefits of different levels of control. We also considered technical difficulties associated with implementing different levels of control.

Uranium mill tailings can affect man through four principal environmental pathways:

- *Diffusion of radon-222, the decay product of radium-226 tailings into indoor air.* Breathing radon-222, an inert gas, and its short half-life decay products, which attach to tiny dust

particles, exposes the lungs to alpha radiation (principally from polonium–218 and polonium–214). The exposures involved may be large for persons who have tailings in or around their houses, or who live very close to tailings. Additional, but smaller, exposures to alpha radiation may result from long-lived radon–222 decay products (principally lead–210 and polonium–210). Exposure due to radon from tailings in or around buildings is best estimated from direct measurements of its decay products in indoor air.

• *Dispersal of radon and of small particles of tailings material in air.* Radon emitted from tailings is widely dispersed in air, and exposes both nearby residents and those at greater distances. These doses are predominantly to the lungs. Wind erosion of unstabilized tailings creates local airborne tailings material. The predominant dose from airborne tailings is to the bones from eating foods contaminated by thorium–230, radium–226, and lead–210, and is small. Exposure due to airborne transport of radon and particulates from tailings usually can be directly measured only near the pile or impoundment, but may be reliably estimated for larger distances using meteorological transport models.

• *Direct exposure to gamma radiation.* Many of the radioactive decay products in tailings produce gamma radiation. The most important are lead–214, bismuth–214, and thallium–210. Hazards from gamma radiation are limited to persons in the immediate vicinity of tailings piles or removed tailings. Exposure due to gamma radiation from tailings is readily estimated from direct measurements.

• *Waterborne transport of radioactive and toxic material.* Dispersal of unstabilized tailings by wind or water, or leaching, can carry radioactive and other toxic materials to surface or ground water. Current levels of contamination appear to be low at most sites. However, contamination of surface and ground water and consequent intake by animals has been identified at three locations. Potential exposure due to this possibility of ground and surface water contamination is highly site-specific and can generally only be determined by a careful survey program.

Our assessments of risks from tailings deal primarily with risks to man. This is because risks to other elements of the biosphere are judged to be mush less significant, and would therefore be controlled to acceptable levels by measures adequate to protect man. In addition, the following discussion focuses largely on *current* levels of risk to man from tailings through air and water pathways. However, these current risks could be expanded by future misuse of tailings by man and by uncontrolled future effects of natural forces. Our disposal standards reflect consideration of both current and potential future risks from tailings.

1. Air Pathways

We estimated the hazards posed by emissions to air from tailings piles or impoundments and from tailings used in and around houses. For the first case we used standard meteorological transport models and considered exposure of people in the immediate neighborhood of the existing tailings sites, the population in local regions, and the remainder of the national population. For the second, we drew largely upon experience from houses contaminated by tailings in Grand Junction, Colorado. Four sources of exposure were considered: inhaled short-lived radon decay products, gamma radiation, long-lived radon decay products, and airborne tailings particulates.

From this analysis we conclude:

(a) Lung cancer caused by the short-lived decay products of radon is the dominant radiation hazard from tailings. Estimated effects of gamma radiation, of long-lived radon decay products, and of airborne tailings particulates are relatively less significant, although high gamma radiation doses may sometimes occur.

(b) Individuals who have tailings in or around their houses often have large exposures to indoor radon and hence high risks of lung cancer. For example, in 50 percent of a sample of 190 houses with tailings in Grand Junction, Colorado, we estimate that the excess lifetime risk to occupants due to exposure to short-lived radon decay products prior to remediation may have been greater than 4 chances in 100.

(c) Individuals living near an uncontrolled tailings pile or impoundment are also subject to high risks fom short-lived radon decay products of radon emitted directly from tailings. For example, we estimate that people living continuously next to some tailings sites can have incremental lifetime lung cancer risks as high as 2 chances in 100.

(d) Based on models for the cumulative risk to all exposed populations, we estimate that, without control, the radon released directly from all tailings currently in existence at presently (1983) licensed sites would cause about 500 lung cancer deaths per century. This figure does not account for any deaths from misuse or windblown tailings because their number is more difficult to predict, even though risk to individuals from such tailings may be somewhat greater than from direct radon emissions. By the year 2000, we estimate that, without control, the amount of tailings existing then would cause approximately 600 lung cancer deaths per century. Approximately one-half of these deaths are projected to occur less than 50 miles from the piles. This increase is small, due primarily to the large amount of unused capacity at present sites, so that most new tailings could be placed on top of existing tailings. This analysis assumes that this will be the actual case, although it is possible that ground water contamination problems would be severe enough to require some piles to be closed. If this is the case, this estimate would be increased.

There is substantial uncertainty in these estimates because of uncertainties in the rate of release of radon from tailings sites, the exposure people will receive from its decay products, and from incomplete knowledge of the effects on people of these exposures. The values presented here represent best estimates based on current knowledge. In addition, these estimates are based upon current sizes and geographical distributions of populations and estimated production of tailings to the year 2000. As populations continue to increase in the future, and as production continues beyond the year 2000, the estimated impact will be larger.

Many commenters addressed the need to prevent misuse. Most concluded that misuse was the most hazardous aspect of tailings and should receive foremost attention. Although most concluded that misuse should be discouraged through means of passive controls, some concluded that misuse could be adequately controlled by institutional means. We conclude that a primary objective of standards for control of hazards from tailings through air pathways should be isolation and stabilization to prevent their misuse by man and dispersal by natural forces, such as wind, rain, and flood waters. A second objective is to minimize radon emissions from tailings sites. A third objective is the elimination of significant exposure to gamma radiation from tailings.

2. Water Pathways

Water contamination does not now appear to be a significant source of radiation exposure at most sites. However, in addition to radionuclides, nonradioactive toxic substances, such

as arsenic, molybdenum, and selenium, can be leached from tailings and contaminate water. Such contamination could affect crops, animals, and people. Process water is used to carry tailings to the piles or impoundments as a slurry. Rainwater also may collect on the tailings. The greatest threat of contamination appears to be from process water discharged with the tailings from the mill, although, in principle, it could be from the gradual effects of rainwater over the indefinite future. Most of this water eventually evaporates or seeps away. Elevated concentrations of toxic or radioactive substances in ground water have been observed at many active sites (seven are identified in the FEIS), and in some standing surface water ponds (but only rarely in surface running water). Any future contamination of water after disposal would arise from the effects of rain or through flooding, from penetration of tailings from below by ground water, or from leaching of tailings transported offsite.

A theoretical analysis performed for the NRC of a large model tailings impoundment with no seepage control showed that contamination of ground water by selenium, sulfate, manganese, and iron might exceed current drinking water standards over an area 2 kilometers wide and 8 to 30 kilometers long. More than 95 percent of this projected contamination was attributed to initial seepage of process water discharged with the tailings during mill operations.

We recognize that the NRC generic model is only one of several that could be applied to transport of contaminants in groundwater. Other models could predict greater or less risks of ground water contamination. An example of greater risk is a plume of contamination that, under certain circumstances, could still move cohesively towards a water supply after the flow of liquid through the tailings has stopped following closure of a pile.

In general, the movement of contaminants through a pile and subsoil to ground water depends on a combination of complex chemical and physical properties, as well as on local precipitation and evapotranspiration rates. Chemical and physical processes can effectively remove or retard the flow of many toxic substances passing through subsoil. However, some contaminants, such as arsenic, molybdenum, and selenium, can occur in forms that are not removed. Typically, ground water can move as slowly as a few feet per year, and only in coarse or cracked materials does the speed exceed one mile per year. For these reasons, contaminants from tailings may not affect the quality of nearby water supply wells for decades or longer after they are released. However, once contaminated, the quality of water supplies cannot usually be easily restored simply by eliminating the source (although, in some cases, removing or isolating the tailings may contribute to improving water quality).

Based on results from the NRC generic model for mill tailings, it is likely that the observed cases of ground water contamination result from seepage of the liquid waste discharges from the mill, and can be controlled by preventing this seepage until the tailings dry out by natural evaporation. Additional future contamination of ground water after these liquid wastes are dried up should be much smaller, and in most cases would be expected to be eliminated by measures required to control misuse of disposed tailings by man and dispersal by wind, rain, and flood waters. These measures should also effectively eliminate the threat of contamination of surface water by runoff or from leaching of tailings transported offsite, and provide a degree of protection of surface and ground water from contamination by flooding. However, at some sites, especially in areas of high rainfall or where ground water tables intersect the tailings, special consideration of potential future contamination of ground water may be needed in designing disposal systems. For example, some commenters suggested incorporation of the SWDA rules for impoundment caps for wet sites. Others pointed out that for new piles careful site selection would provide protection of ground water.

We conclude that the primary objective of standards for control of hazards from tailings through water pathways is to prevent loss of process water through seepage, prior to closure. A secondary objective is to avoid surface runoff and infiltration both before and after disposal.

C. Control of Hazards from Tailings

We consider methods for control so as to assess the achievability, economic impact, and reliability of controls to meet alternative standards. As noted above, the objectives of tailings disposal (and of tailings management prior to disposal) are to prevent misuse by man, to reduce radon emissions and gamma radiation exposure, and to avoid the contamination of land and water by preventing erosion of tailings by natural processes and seepage of waste process water. The longevity of control is particularly important. This can be affected by the degree to which control measures discourage disruption by man; and by the resistance of control measures to such natural phenomena as earthquakes, floods, and windstorms, and to chemical and mechanical processes in the piles or impoundments. ("Piles" commonly means tailings simply piled up on the ground, and "impoundments" means piles constrained by dikes made of other materials. We will use the term "piles" to mean both henceforth.) Prediction of the long-term integrity of control methods becomes less certain as the period of concern increases. Beyond several thousand years, longer-term geomorphological processes and climatic change become the dominant factors. Methods are available for projecting performance for periods up to about 1000 years. A recent report prepared for the NRC ("Design Considerations for Long-Term Stabilization of Uranium Mill Tailings Impoundments," Colorado State University, 1983) provides an up-to-date detailed review of these matters.

Methods to prevent misuse by man and disruption by natural phenomena may be divided into those whose continued integrity depends upon man and his institutions ("active" controls) and those that do not ("passive" controls). Examples of active controls are fences, warning signs, restrictions on land use, inspection and repair of semi-permanent tailings covers, temporary dikes, and drainage courses. Examples of passive controls are thick earthen covers, rock covers, massive earth and rock dikes, burial below grade, and moving tailings piles out of locations highly subject to erosion, such as unstable river banks.

Erosion of tailings by wind, rain, and flooding can be inhibited by contouring the pile and its cover, by stabilizing the surface (with rock, for example) to make it resistant to erosion, and by constructing dikes to divert rapidly moving flood waters. Erosion can be inhibited even more reliably by burying tailings in a shallow pit and/or by locating them away from particularly flood-prone or otherwise geologically unstable sites. Thus, especially in the case of new tailings piles, shallow burial and sites with favorable long-term characteristics should be given preferred consideration.

Methods to inhibit the release of radon range from applying a simple barrier (such as an earthen cover) to such ambitious treatments as embedding tailings in cement or processing them to remove radium, the precursor of radon. Covering tailings with a permeable (porous) barrier, such

as compacted earth, delays radon diffusion so that most of it decays in and is therefore effectively retained by the cover. In addition to simple earthen covers, other less permeable materials such as asphalt, clay, or soil cement (usually in combination with earthen covers) could be used. The more permeable the covering material, the thicker it must be to achieve a given reduction in radon release. However, maintaining the integrity of control of radon by thin, very impermeable covers, such as plastic sheets, is unlikely, even over a period as short as several decades, given the chemical and physical stresses present at piles.

The most likely constituents of cover for disposal of tailings are locally available earthen materials. The effectiveness of an earthen cover as a barrier to radon depends most strongly on its moisture content. Typical clay soils in the uranium milling regions of the West exhibit ambient moisture contents of 9 percent to 12 percent. For nonclay soils ambient moisture contents range from 6 percent to 10 percent. The exact value depends upon the material involved, and on local climatic conditions. The following table provides an example of the changes in cover thicknesses that might be required to reduce radon emission to 20 pCi/m²s for the above ranges of soil moisture. Four examples of tailings are shown that cover the probable extreme values of radon emission from bare tailings (100 to 1000 pCi/m²s); the most common value for old tailings is approximately 500 pCi/m²s, and for new tailings is approximately 300 pCi/m²s.

ESTIMATED COVER THICKNESS* (IN METERS) TO ACHIEVE 20 pCi/m²s**

Radon emission from tailings (pCi/m²s)	Percent moisture content of cover			
	6	8	10	12
100	1.7	1.3	1.0	0.7
300	2.8	2.2	1.5	1.1
500	3.4	2.6	2.0	1.5
1000	4.1	3.2	2.4	1.8

* These values were calculated from equation (8) in Appendix P of the Final Generic Environmental Impact Statement on Uranium Milling, U.S. Nuclear Regulatory Commission, NUREG-0706, September 1980. They do not include allowance for uncertainties in tailings moisture content or diffusion properties of the cover.

** A picocurie (pCi) is a trillionth of a curie. One picocurie of material produces just over two transformations per minute. A pCi/m²s is a unit for the release rate of radioactivity from a surface (m = meter, s = second).

These values are for homogeneous covers, and assume the tailings have the same moisture content as the cover. In practice, somewhat thicker covers would be required to provide long-term assurance of satisfying any particular level of control. Some of the factors that must be considered for predicting long-term performance are moisture content of the tailings and cover at equilibrium, and the measured diffusion characteristics of cover materials. The DOE and NRC have conducted studies which provide a basis, at least within a limited range of control and predictability, for addressing these factors in the design of tailings covers based on locally available materials and climate.

Methods that control radon emissions will also prevent transport of particulates from the tailings pile to air or to surface water. Similarly, permeable covers sufficiently thick for effective radon control will also absorb gamma radiation effectively (although thin impermeable covers will not).

Two methods may be considered for protecting ground water at new tailings piles. The first is the placement of a physical barrier, called a liner, between the tailings and the aquifer zone, to prevent water containing hazardous constituents from entering the aquifer. Either clay or plastic liners can be installed at about the same cost. Both have shortcomings. Plastic liners are impermeable, but may be subject to rupture through poor installation or uneven loading. Clay liners are permeable to some constituents, and may require use of additional measures, such as partial neutralization of the tailings, especially at acid leach mills, to satisfactorily protect ground water, but are expected to retain their effectiveness for long periods of time. The second method is treatment of process water to modify its acidity or alkalinity, if such treatment were shown to prevent contamination. At a neutral level many hazardous constituents of tailings liquids become insoluble and thus not available to contaminate ground water. However, not all hazardous constituents are so affected, and the action of rainwater, certain weathering processes, and mineralization of the soil or rock matrix can upset this neutralization over time, thereby releasing contaminants. There is little difference in costs for these two methods. Liners (either clay or synthetic) are currently required by NRC as a matter of good engineering practice for most new tailings impoundments.

EPA does not believe it is environmentally desirable to require all new wastes at existing sites to be placed on new piles, because new piles would increase radon emissions, at least until the pre-existing pile is covered, and would permanently contaminate more land. Satisfying ground water standards at existing tailings sites that do not have liners, however, will require widely varying actions from site to site. Neutralization of existing tailings is not a generally feasible option since it would require excavation of most, if not all of the tailings to assure mixing, and may not immobilize all hazardous constituents. Ground water contamination is known to have occurred at seven sites, and may be occurring at many others. It may not be possible to cleanup the ground water at some sites. In the worst cases a new, lined tailings pile may be required to prevent contamination from new tailings. In other cases, existing tailings piles may release essentially no contaminants to ground water because the type of soil they rest on acts as an effective liner. We have discussed the range of possible costs for cleanup of ground water in the FEIS and RIA. In practice, we expect most tailings piles will fall somewhere between these two extremes. Less expensive corrective action than a new liner may be sufficient to satisfy ground water standards for hazardous constituents at many sites. For example, an active water management program may be employed to reduce the quantity of water in the tailings and thus reduce the driving force for ground water contamination, or back pumping of water around the piles may prevent losses to the surrounding ground environment. Actions such as these are already being taken at certain sites (Cotter Mill, Canon City, CO, and Homestake Mill, Grants, NM, for example).

Control of possible long-term low-level contamination of ground water may sometimes be difficult. In cases where intrusion of contamination into ground or surface water is a potentially significant problem, liners and caps may provide a good degree of protection for at least many decades. However, more permanent protection may, in such cases, require choice of (for new tailings) or removal to (for existing tailings) a site with more favorable hydrological, geochemical, or meteorological characteristics.

Very effective long-term inhibition of misuse by man, as well as of releases to air and surface water, could be achieved by burying tailings in deep mined cavities. In this case, however, direct contact with ground water would be difficult to avoid. The potential hazards of tailings could also be reduced by chemically processing them to remove contaminants. Such processes have limited efficiencies, however, so the residual tailings would still require some control. Furthermore, the extracted substances (e.g., radium and thorium) would be concentrated, and would themselves require careful control.

We analyzed the practicality of a number of possible control methods. These are described in the FEIS and the RIA. The total cost of disposal by surface or shallow burial is affected most strongly by the type of material used to stabilizer the surface of the trailings against erosion and to inhibit misuse by man, and by the water protection features required. Total costs are less sensitive to the amount of cover required to inhibit radon release. In general, costs of covers using man-made materials (e.g., asphalt) are somewhat higher than costs for earthen covers, and the reliability is lower. Active control measures are usually less costly in the short term than are passive measures, but are considered much less reliable in the long term. Deep burial of tailings piles or use of chemical processing to extract radium are much more costly than for surface or shallow burial (below grade) disposal using covers, and the practicality is not demonstrated.

D. Environmental Standards and Guidance Now Applicable to Uranium Tailings

EPA recognizes that it is establishing standards in an area that is already the subject of governmental regulation and has taken into account, where relevant, the existing schemes and levels of protection in developing these standards.

EPA promulgated 40 CFR Part 190, "Environmental Radiation Protection Standards for Uranium Fuel Cycle Operations," on January 13, 1977 (42 FR 2858). These standards specify the upper limits of radiation doses to members of the general public to which normal operations of the uranium fuel cycle must conform. They cover radiation doses due to all environmental releases of uranium by-product materials during the period a milling site is licensed, with the exception of emissions of radon gas and its decay products.

The Nuclear Regulatory Commission promulgated rules in 10 CFR Part 40 on October 3, 1980, which specify licensing requirements for uranium and thorium milling activities, including trailings and wastes generated from these activities (45 FR 65521). These rules specify technical, surety, ownership, and long-term care criteria for the management and final disposition of by-product materials. Some of these rules are affected by these standards. For example, they specified a design objective of 2 pCi/M²s and a longevity of greater than 1000 years for disposal of tailings. Due to congressional actions, these regulations have never been enforced by NRC, although some Agreement States have enforced comparable regulations. We note that the NRC regulations specified design objectives; that is, the values specified were to be achieved based on average performance; whereas these EPA rules specify standards, which designers must plan not to exceed, with a reasonable degree of assurance. The NRC has noted that any changes necessary will be made when these EPA standards are promulgated, and has already suspended those portions of its regulations which are affected by these standards (48 FR 35350; August 4, 1983).

Under the Agreement State program, States can issue licenses for uranium processing activities, including control and disposal of by-product materials. The NRC has enumerated in 10 CFR Part 150 the authorities reserved to it in its relations with Agreement States under the provisions of UMTRCA, and has specified conditions under which Agreement States may issue licenses under UMTRCA (45 FR 65521). NRC's conditions include the specification that State licenses must ensure compliance with EPA's standards. Some Agreement States can adopt more stringent rules than those adopted and enforced by the NRC, including requirements that are more stringent than EPA's standards.

EPA promulgated 40 CFR Part 260 et seq., "Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities," under Subtitle C of the Solid Waste Disposal Act, as amended on July 26, 1982 (47 FR 32274). Although radioactive materials controlled under the Atomic Energy Act of 1954, as amended, are not covered by the SWDA, UMTRCA requires that the standards proposed herein provide for protection of human health and the environment from nonradioactive hazards in a manner consistent with applicable standards promulgated under Subtitle C of the SWDA. The Act also requires the NRC to ensure conformance to "* * * general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material under [Subtitle C of SWDA]."

EPA promulgated 40 CFR Part 440, "Ore Mining and Dressing Point Source Category; Effluent Limitations Guidelines and New Source Performance Standards, Subpart C—Uranium, Radium and Vanadium Ores Subcategory," on December 3, 1983 (47 FR 54598). The purpose of 40 CFR Part 440 is to establish effluent limitations and standards under the Clean Water Act for existing and new sources in a number of ore mining and dressing subcategories. Out of 27 mills in the uranium, radium and vanadium ores subcategory existing at that time, only one was discharging directly to surface water. In view of this, the regulations did not establish best available technology (BAT) limitations for existing sources in this subcategory. The one uranium mill directly discharging effluents is currently regulated by a discharge permit in accordance with previously existing best practicable control technology (BPT) effluent limitations contained in 40 CFR Part 440. The new source performance standards (40 CFR 440.34(b)) were based upon the demonstration of no discharge to surface waters at the 26 other mills. These standards apply to locations where the annual evapotranspiration rate exceeds the annual precipitation rate (as is the case in most uranium milling areas), and require no discharge of process waste water to surface waters from mills using the acid leach, alkaline leach, or combined acid and alkaline leach process for the extraction of uranium. For locations where there is more precipitation than evapotranspiration process waste water can be discharged up to the difference between annual precipitation and evapotranspiration.

Solution extraction, or "*in situ*" mining, is a processing method in which uranium is recovered from ore without moving or disturbing the ore body. In this method holes are drilled at selected points around an ore body and a solvent is pumped into some holes and the resulting solution out other holes. The solvent passes through the ore, dissolves the uranium, and carries it back to the surface. The uranium is then stripped from the solution and concentrated. The solvent, which is stored in holding ponds, can be treated and reused or discarded. Although this method produces no sandy tailings, it does produce sludges that contain many of the same radioactive and nonradioactive substances found in tailings piles. Consequently, the above-ground wastes from *in situ* mining are covered in these proposed standards. We note that because *in situ* mining and conventional milling currently are done in the same regions of the country, disposal of sludges on tailings piles may often be arranged.

Rules for protection of ground water from the underground operations of *in situ* mining are provided by the Underground Injection Control program promulgated under Sections 1421 and 1422 of the Safe Drinking Water Act.

The associated regulations, 40 CFR Parts 144, 145, and 146, impose administrative and technical requirements on such operations, through either approved State programs or EPA-implemented programs. These regulations are not intended to apply to the underground ore bodies depleted by *in situ* uranium mining operations.

In addition to these rules established under UMTRCA, EPA is required to establish emission standards under the Clean Air Act (CAA) for hazardous air pollutants. Although there are no final standards for air emissions applicable to mill tailings piles, a proposed rule for radionuclides has been published in the Federal Register (48 FR 15076) on April 6, 1983. The relationship of the Clean Air Act of this rule is discussed in more detail later in this preamble.

Finally, radiation protection guidance to Federal agencies for the conduct of their radiation protection activities was issued by the President on May 13, 1960 and published on May 18, 1960 (25 FR 4402). Federal Radiation Protection Guidance governs the regulation of radioactive materials by the NRC and Agreement States, and includes the following guidance: "* * * every effort should be made to encourage the maintenance of radiation doses as far below [the Federal Radiation Protection Guides] as practicable * * *" and "There can be no single permissible or acceptable level of exposure without regard to the reason for permitting the exposure. It should be general practice to reduce exposure to radiation, and positive effort should be carried out to fulfill the sense of [this Guidance]. It is basic that exposure to radiation should result from a real determination of its necessity." This guidance is currently known as the "as low as reasonably achievable" (ALARA) principle. It is particularly suited to minimizing radiation exposure under conditions that vary greatly from site to site, or from time to time, and is an integral part of NRC and Agreement State licensing determinations.

The standards published here will supplement the above standards, guidance, and regulations in order to satisfy the purposes of UMTRCA to "* * * stabilize and control * * * tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public." UMTRACA does not provide specific criteria to be used in determining that these purposes have been satisfied. EPA's objective, when not preempted by other statutory requirements, has been to propose standards that: (1) Take account of health, safety, and environmental and economic costs and benefits in a way that assures adequate protection of the public health, safety, and the environment; (2) can be implemented using presently available techniques and measuring instruments; and (3) are reasonable in terms of overall costs and benefits.

The legislative record shows that Congress intended that EPA set general standards and not specify any particular method of control. "The EPA standards and criteria should not interject any detailed or site-specific requirements for management, technology or engineering methods * * *" (H.R. Rep. No. 1480, 95th Cong., 2nd Sess., Pt. I, P.17.) UMTRCA gives the NRC and the Agreement States the responsibility to decide what methods will assure these standards are satisfied at specific sites. (However, EPA must concur with NRC regulations established to implement Section 82a(3) of UMTRCA.) Therefore, our analyses of risk, control methods, costs, and other pertinent factors emphasize the general characteristics of uranium mill tailings and the affected sites.

IV. Resolution of Major Issues Raised in Public Comments

A. The Basis for the Standards

1. Health Risk Models

Several commenters expressed the view that the models used by EPA overestimate health risks from breathing radon decay products. Others believe EPA underestimated the risk. For example, the American Mining Congress (AMC) stated that "EPA has systematically overestimated the factors which determine potential health effects from mill tailings. In the aggregate, these overestimates combine to yield an overestimate factor of about 60." These alleged factors are:

Area of model tailings piles	1.4
Radon flux per unit activity	1.6
Transport and dispersion models	5.0
Equilibrium for radon decay products	1.7
Risk of lung cancer	3.0
Population near tailings piles	Unknown

The total radon emitted from tailings is approximately proportional to the surface area covered by tailings. EPA used the same area that NRC used in its FGEIS, 80 hectares, to estimate radon emissions. The AMC prefers 50 hectares, and points out that NRC (in NUREG–0757, Feb. 1981) later revised its estimate to 50 hectares. However, current projections of uranium production indicate that very few new mills or piles, if any, will start up between now and the late 1990's. Thus, unless a significant number of existing piles are unable to comply with the requirements of this rule regarding ground water protection, essentially all radon emissions will be from existing piles, which have an average area of about 70 hectares, as shown in the FEIS. In addition, radon may be emitted from on-site areas contaminated by windblown tailings. We conclude the area of piles has been overestimated at most by a factor of 1.16.

The emission rate of radon per unit area of tailings is directly related to the activity of radium-226 in tailings. Several factors which are not well understood influence this emission rate. In the report cited above, the NRC concluded: "Considering the variation observed under differing conditions at a number of sites, the staff has elected to apply conservative specific flux values of 0.3 [pCi of radon-222 per square meter-second/pCi of radium-226 per gram of tailings] for wet tailings and 1.0 for dry tailings and to count moist tailings as dry in making the calculations." EPA agrees with this conclusion and believes no correction which assumes that some tailings are permanently wet is appropriate for this factor.

Regarding transport models, measurements are consistent with the transport and dispersion models we used. This is discussed in detail in the FEIS. The method used by EPA has been the basic work-horse of local dispersion estimation for years. In 1977, the participants of an expert group assessing atmospheric transport of radionuclides concluded that, for distances out to 10 km in reasonably flat terrain, and given good local wind observations: "Accuracy for the usual annual average concentration is about a factor of ± 2." Furthermore, these dispersion estimates are based on an empirical approach that is inherently unbiased and that should therefore be as likely to overpredict as to underpredict.

It should be noted that we are not modeling background concentrations of radon. While it may be experimentally difficult to demonstrate the increment above background due to a tailings pile at distances greater than 1 km, there is no reason to believe that the basic physical principle of conservation of mass does not continue to be valid. Once released to the atmosphere, radon, which is a chemically inert gas, disperses freely until it is removed by radioactive decay. We conclude that our dispersion estimates provide a reasonable basis for calculating atmospheric concentrations of radon.

There appears to be a misconception about the conditions to which EPA's assumption of a 0.7 equilibrium fraction for radon decay products applies. (The "equilibrium fraction" expresses the amount of radon decay products actually present relative to the maximum theoretically possible. This fraction is important, since the health risk is primarily due to radon decay products, not to radon itself.) Most of the data cited by commenters to support a lower equilibrium fraction are for situations in which the source of radon is diffusion into houses from underlying soil. In this situation the initial decay product equilibrium fraction is zero. For the airborne radon from tailings piles considered in EPA's estimates, the decay product equilibrium fraction in outdoor air approaches 1.0, beyond the vicinity of a pile. After taking into account periods of time an individual spends indoors and outdoors, periods of time a house is well-ventilated by outdoor air, and the fate of radon and decay products in outdoor air when it infiltrates a house, we conclude use of an average value of 0.7 for the effective equilibrium fraction for exposure of people to airborne radon from piles is appropriate for distances far from tailings piles. This value is therefore retained for calculations of total impact of radon releases from piles. Very close to tailings piles, however, the decay product equilibrium factor in outdoor air is low. We conclude, therefore, after taking the same indoor/outdoor factors into account, that an average effective decay product equilibrium fraction about one-half as large is probably more appropriate next to piles. This lower value should be applied to estimates of the maximum individual risk next to piles.

The EPA estimate of lung cancer risk from radon decay products is based on studies of uranium and other heavy metal miners, is consistent with the most recent recommendations of the NAS BEIR Committee (1980), and is within 20 percent of the value recommended for use in a recent, exhaustive study conducted in Canada for their Atomic Energy Control Board (1982). We have noted our difficulties with the assumptions which underlie other estimates cited by commenters in our detailed responses to comments in the FEIS. We conclude the EPA value should be used in the absence of any convincing evidence that another value is more appropriate.

EPA used two regional populations for its risk estimates; the first population, identified as for a "remote" site, was hypothetical, and was taken from NRC's "Final Generic Environmental Impact Statement on Uranium Milling" (FGEIS). The second population, identified as for a "rural" site, is that for the Edgemont, S.D. site, and is based on 1970 census data. We assumed that a mix of six "rural" and 17 "remote" sites would properly represent the 23 sites modeled in the DEIS. We have just received the results of a 1983 population survey for all 52 mill tailings sites performed for us by Battelle Pacific Northwest Laboratories. This survey, which was limited to individuals within 5 km of the piles, shows that the total population at the 26 active sites was 2054 within 2 kilometers of all active tailings piles, and 14,737 within 5 kilometers.

We have re-evaluated the local and regional health risk based upon this re-survey of current populations within 5 km and 1970 census results for populations from 5 to 80 km of the 26 active sites. The re-evaluation show a small decrease in calculated local effects, and an increase of equal size in calculated regional effects. (Our estimates of risk to more distant populations, i.e., to the remainder of the United States, are unaffected.) These data indicate that our initial estimate of total health effects to populations is correct. (We note that we have assumed that there will be no increases of populations at these sites over the next 1000 years, a clearly nonconservative assumption.)

In summary, we do not believe the total health effects in the DEIS have been overestimated. The factor of about 1.16 due to a slightly different average pile area is likely to be negated by normal population increases (not accounted for in our estimates) within the first few decades of the lifetime of the hazard posed by these tailings. The estimate of maximum individual risk for a model pile is affected principally by our assumption for the equilibrium fraction for radon daughters, and should be reduced by about a factor of two. We believe this change is insufficient to warrant changing our basic conclusions regarding the risk from tailings.

2. Significance of Risk from Radon Emitted by Tailings Piles

Several commenters argued that EPA has not demonstrated that the risks associated with radon emissions from tailings are significant, and observed that much of the health impact attributed to tailings accrues to very large numbers of people at very low levels of individual risk. They suggested that the proper test of significance is to compare such risks with common hazards, such as the risk from the natural background radiation. For example, they would compare the 6 lung cancers per year that EPA estimates (see FEIS) could result from uncontrolled tailings piles after the year 2000 with: the 21,000 such cancers a commenter estimated as caused annually by background radiation; deaths from motor vehicle accidents (50,000 per year) and home accidents (25,000); tornadoes (130); etc. Based on such comparisons, these commenters concluded that the risks from radon emitted from tailings are not significant, and that EPA's standard should not limit such emissions.

EPA believes these comparisons are misdirected and do not address a central purpose of the legislation that requires this rulemaking, which is to "* * * make every reasonable effort to * * * prevent or minimize radon diffusion into the environment * * * from * * * tailings." EPA recognizes that radiation background and other common hazards cause far greater total annual harm than anyone would reasonably estimate might occur from uncontrolled radon emissions from tailings. However, these other risks are not the subject of this rulemaking. Comparisons of the type suggested may be useful for setting priorities for efforts to reduce the variety of hazards to public health (to the extent that they are avoidable), but they are not useful for deciding the appropriate level of control for a specific source of hazard. That decision must be based upon the specifics peculiar to the hazard under consideration. The existence of other hazards does not, absent Congressional direction, justify EPA's delaying these standards until all other controllable hazards are addressed, or justify EPA's ignoring Congress' will that standards be set.

The fact that the health impact of tailings is in large part attributable to small radiation doses delivered to large numbers of people over long periods of time was recognized when UMTRCA was enacted. The then Chairman of the NRC testified as follows: "The health effects of this radon production are tiny as applied to any one generation, but the sum of these exposures can be made large by counting far into the future, large enough in fact to be the dominant radiation exposure from the nuclear fuel cycle. Whether it is meaningful to attach significance to radiation exposures thousands of years in the future, or conversely, whether it is justifiable to ignore them, are questions without easy answers. The most satisfactory approach is to require every reasonable effort to dispose of tailings in a way that minimizes radon diffusion into the

atmosphere." (H.R. Rep. No. 1480, 95th Cong., 2nd Sess., Pt. II, p. 25.) We have concluded that maximum individual lifetime risk (estimated as 2 in 100) and the long-term cumulative impact on populations (potentially many tens of thousands of deaths over the long term) due to radon emissions from tailings are clearly significant enough to justify controls. As discussed in the FEIS, RIA, and a later section of this Preamble, our analysis shows that tailings can, at a reasonable cost, be disposed of in a manner that provides, among other benefits, greatly reduced radon emissions.

3. Standards Based on Current Populations

During the review of the standards for the inactive sites by certain Federal agencies, questions were raised regarding the appropriateness of the control standards for general application to all 24 inactive sites. Some reviewers suggested that less restrictive standards might be appropriate for sites that are in currently sparsely-populated areas. Other reviewers suggested that we consider a radon standard that applies at and beyond the fenced boundary of such a site, i.e., a standard that relies in part on dispersion and institutional maintenance of control over access. EPA requested public comments on these issues for the inactive sites (48 FR 605, January 5, 1983). These issues are most simply stated as: (1) Should the degree of radon control after disposal depend in part on the size of the current local population, and (2) Should implementation of the disposal standards be permitted to depend primarily or in part on maintenance of institutional control of access (e.g., by fences)? We also specifically requested comments on these issues in the April 29, 1983 notice of proposed rulemaking for active mills.

Most commenters who addressed the first of these issues opposed different standards at remote sites (although most industry comments favored less restrictive standards for *all* sites). Many raised the "equity" consideration, i.e., the fairness of protecting a few people less just because of where they live. Others commented that many of these sites are locations where people are unlikely to live, or, conversely, that the sizes of populations in the future are not predictable and cited examples of recent changes. Finally, commenters who addressed the issue of whether EPA is authorized to set different standards based on "remoteness" denied that the Agency has such authority.

In 1983 EPA counted the number of people living close to all the active and inactive mill sites. Of the 52 sites surveyed, only 7 had no people living within 5 kilometers (3 miles). Another 6 sites had 10 or fewer people living within 5 kilometers. Collectively, however, the mill sites have a normally distributed continuous range of local populations, and it is not possible to distinguish a special set of sites. The definition of a remote site is therefore difficult to achieve, unless it is done arbitrarily. In addition, demographers have concluded that it is not possible to determine that a population at a specific location will remain low in the future, if it is low now. Therefore, a choice of two different standards implies a need for institutional oversight of future population shifts and for having to upgrade the disposal at those sites that exceed some criterion of "remoteness." Presumably, the State or Federal custodian would be responsible, not the original owner.

The motivation for considering relaxed standards at "remote" sites is to reduce the cost of disposal. Our analysis shows that any potential cost saving from less restrictive standards at such sites is not commensurate with the loss of benefits. In a later section we report the costs for several relaxed radon standards. These results show, for the case of *no* radon emission limit (case C1) and with no provision for the added costs of institutional control through fencing, land-use control, and land acquisition (to avoid unacceptably high individual doses to nearby residents), and with no provision for increased costs to meet closure requirements under SWDA (discussed below), that 46 percent of the cost of disposal at the level required by these standards (case C3) would be potentially recoverable. We have examined the added costs required for institutional control and conclude that they may vary from about 10 to 50 percent of these potentially recoverable costs, depending mostly on the cost of land acquisition at specific sites. Costs for conformance to RCRA closure requirements for a cap under § 264.228(a)(2)(iii)(E) range from about 50 to 140 percent of these potentially recoverable costs, depending upon whether or not the pile has an impermeable liner under it or not. (This SWDA requirement was excepted under the proposed standards, on the basis that it would interfere with the moisture required for radon control. This basis would no longer exist in the absence of a radon limit.) Any savings through deletion of radon control would be achieved by forgoing approximately one-half of the annual benefit (the entire impact on nonregional national populations), a considerable degree of protection against misuse, and a significant part of the anticipated total term of effective protection from all hazards, due to the greatly reduced thickness of the cover. We have concluded, therefore, independent of other considerations, that when costs for institutional control and compliance with SWDA closure are added and the net saving is applied to only those sites that might be defined as "remote", the potential total cost saved is not significant enough in comparison to the benefits foregone to justify separate standards.

Finally, with regard to the Agency's legal authorization to establish a separate level of protection at remote sites by issuing two sets of standards, UMTRCA clearly contemplates that these standards be adequate for the long term and that they achieve the benefits of radon control. Regarding those objectives, we are aware of no site that is uninhabited and can also reasonably be assumed will remain uninhabited, nor are we aware of any scientific basis for concluding that there is no impact on national populations due to radon emissions from remote sites. We conclude, therefore, that relaxed standards for "remote" sites are not feasible on demographic grounds, are not defensible on legal grounds, and are not attractive, in any case, on the basis of cost-effectively achieving the various public health and environmental goals of this rulemaking.

4. Passive vs. Institutional Controls

As noted above, EPA also requested comments on whether a radon limit applied at the boundary ("fenceline") of the Government-owned property around a tailings pile, i.e., a "dispersion" standard, would be an appropriate form of standard for the sites with low nearby populations. (Such consideration could also apply to some more populated sites.) Such a dispersion standard could be satisfied largely by institutional methods, i.e., by acquiring and maintaining control over land. The proposed disposal standard, by comparison, would require generally more costly physical methods (such as applying thick earthen covers) that directly control the tailings and their emissions with minimal reliance on institutional methods (i.e., it is a "control" standard). EPA also requested comments on the adequacy of such a radon "fenceline" standard to meet the objectives of the UMTRCA.

Comments on this issue ranged from strong support of primary reliance on passive stabilization for periods greater

than 1,000 years to protection for only a few decades wih primary reliance on institutional controls. A majority of commenters recommended retaining primary reliance on passive control rather than on institutional control. Those that favored use of institutional control (principally of misuse and maximum individual exposure) argued for limiting public access through use of fences and administrative control of land use. Those opposed cited the lack of reliability of such control, especially through use of fences in remote areas of the western United States.

EPA considers that protection from the long-term hazards associated with radioactive waste should primarily rely on passive control methods. We note, in this regard, the intent of Congress as stated in the congressional report accompanying UMTRCA: "The committee believes that uranium mill tailings should be treated in accordance with the substantial hazard they will present until long after existing institutions can be expected to last in their present forms." In addition, as noted in the proceeding section, the costs of land acquisition to limit maximum individual exposures can easily negate a significant fraction of potential savings through use of thinner covers. However, institutional controls can play a useful secondary role in supplementing passive controls and in assuring during the early period of disposal, that passive controls are adequate to achieve their design objectives.

Section 202 of the UMTRCA requires the Federal Government or the States to acquire and retain control of these tailings disposal sites under licenses. The licensor is authorized to require performance of any maintenance, monitoring, and emergency measures that are needed to protect public health and safety. We believe that these institutional provisions are essential to support any project whose objective is as long-term as are these disposal operations, and for which we have as little experience. This does not mean we believe that primary reliance should be placed on institutional controls; rather, that institutional oversight is an essential backup to passive control. For example, as long as the Federal Government or the States exercise their ownership rights and other authorities regarding these sites, they should not be inappropriately used by people. In this regard, even with the disposal actions required by these standards it would not be safe to build habitable structures on the disposal sites. Federal or State ownership of the sites is assumed to preclude such inappropriate uses.

5. Control of Radon Releases During Milling Operations

The proposed rule anticipated that the regulatory agency apply the "as low as reasonably achievable" (ALARA) principle of Federal Radiation Protection Guidance in establishing management procedures and regulations to control radon from operating mills. This approach was proposed because EPA concluded that a numerical standard to control radon was inappropriate for application during operations. This is because practical methods for reducing radon emissions during operations of existing mills and piles vary in effectiveness with time; it is very difficult to measure, quantitatively, their efficacy; and different methods are appropriate for different sites. The primary means for controlling radon emissions from existing tailing piles during operations are to keep the tailings as wet as possibile or to use phased disposal.

Some commenters indicated that the provisions of the proposed rule were inadequate to assure that the public would be protected. They argued that EPA has the responsibility under both UMTRCA and the Clean Air Act to provide suitable health protection to all members of the public. They suggested that requiring certain work practices or tailings management practices would provide greater public health protection than the provisions of the proposed rule. For example, they note that "staged" or "phased" disposal of tailings and good water management practices could be effective and reasonable.

EPA will consider further the feasibility and practicality of providing greater assurance that radon releases will be minimized during milling operations than would the proposed rule. The Agency has not sufficiently analyzed work practice and tailings management techniques to determine whether they are suitable for this purpose and which alternatives are best. Therefore, the Agency will publish an Advance Notice of Proposed Rulemaking under the Clean Air Act for condideration of the control of radon emission from uranium tailings piles during the operational period of a uranium mill. The ANPR will enable the Agency to gather information on the feasibility, effectiveness, and cost of various alternatives that would control radon releases from operating mills. This will enable EPA to be better informed when judging whether standards are needed, and, if so, the most suitable requirements.

B. Disposal Standards

1. Design Requirements for Long-Term Protection

Comments on this issue were greatly divergent. Some commenters believed controls should be required to last for thousands of years while others thought a few decades would be adequate. Comments from experts in the fields of civil engineering and geomorphology were useful in resolving this issue.

Standard design practice for structures that, should they fail, could lead to loss of life or significant destruction of property is based on the likelihood that a sufficiently disruptive event (e.g., a flood or hurricane) might occur within a specified time. For example, a bridge may be designed to withstand all disruptive events that have more than 1 chance in 100 of occurring within, say, 50 years.

Commenters noted that rushing water caused by very high rainfall events might damage or destroy a tailings containment system that lies in its path (floods that merely cover or wet a pile are not as significant). Therefore, they suggested, the disposal method should be designed to withstand any such rainfall events that have more than a small likelihood of occurring during the period for which control is to be "reasonably assured." Expert commenters noted that floods of greater magnitude than a "1000-year flood," for example, as they are generally defined, have a high likelihood of occurring within 1000 years. Thus, in order to provide reasonable assurance that a pile will withstand all floods that have more than some small chance of occurring within 1000 years, the control system must be designed to withstand much rarer events, such as a "probable maximum flood." In practice, they suggested, adequately protecting piles for even a few hundred years requires designing control systems to withstand all events that are likely to occur within thousands of years. Furthermore, the maximum rainfall that might be expected to occur within thousands of years is very nearly the maximum possible rainfall. Therefore, in practice, the system would have to be designed for approximately the same (i.e., maximum) rainfall whether the control period is 200 years or 1000 years.

As discussed above, we believe protection for only a short period (a few decades) is inconsistent with the intent of Congress. Some commenters argued for periods longer than 1000 years. We believe that the specification of a design period of 1000 years will achieve the objectives of these commenters, while at

the same time giving engineers who must carry out these standards a design criterion reasonable to assess. We note that commenters did not identify any specific design features that would flow from a greater than 1000-year criterion that would not already be required to satisfy a 1000-year requirement.

Based on these considerations we conclude that the time over which protection should be provided should be specified as proposed.

A closely related matter is the degree of assurance with which controls can be designed to meet the longevity requirement. Some failure modes can be well quantified (e.g., performance of dikes, etc.) and others may not be as well characterized (e.g., aging characteristics of rock used to stabilize slopes). We recognize that, in some cases, it may therefore be difficult to certify conformance in all respects to a 1000-year requirement for longevity of control. For this reason we have retained the flexibility of the proposed rule to certify for shorter periods (but in no case less than 200 years). We leave the matter of fully defining what constitutes "reasonable assurance" to the implementing governmental agencies, but expect that standard engineering (design) criteria will be used to limit the probability of failure over the required longevity period to a value consistent with other design situations where public health and safety are important concerns.

2. Radon Emission Limit

Quantitative estimates of health effects from tailings can reasonably be made for radon emissions and windblown particulates. Health effects from misuse of tailings and water contamination cannot be quantified because of the extremely high degree of uncertainty associated with the likelihood and extent to which misuse and contamination might occur and the consequent degree to which people will consequently be exposed to radiation and toxic substances. (For example, tailings used as fill in unoccupied areas would not result in direct human exposure. Using tailings as fill for residential buildings carries a high probability of very significantly elevating radiation exposure and risk. The degree to which people might be exposed to contaminants from tailings through waterborne pathways is subject to similarly high uncertainties.)

The likelihood of health effects from exposure to radon and its decay products is, considerably greater than from particulates, even when external radiation and food chain contributions are included in the estimates for particulates. Therefore, the only quantitative estimates of effects discussed are those for radon emissions. We believe, however, that effects from misuse or water contamination could be comparable to those from radon emissions if long-term protection is not afforded.

The primary concern of commenters who thought the proposed radon emission standard was too lax was the risk to nearby individuals. The estimated added lifetime risk of fatal lung cancer for someone living 600 meters from the center of a model pile is 1 in 1000 due to radon from a tailings pile emitting radon at the level of 20 pCi/m^{2}s, if the cover is designed to just achieve that emission level without employing additional control to provide reasonable assurance of achieving it for 1000 years.

Commenters who thought the proposed radon emission standard is too strict contended that the cost of compliance would be too high, in view of the small contribution radon from tailings makes to a population's total exposure to atmospheric radon. They also generally believed EPA had overestimated the health effects from radon. We have addressed this last concern in an earlier section of this notice.

Selecting a limit for radon emission from tailings involves four public health objectives, in addition to reducing health effects from radon released directly from the pile. These may all be achieved by using a thick earthen cover, which serves to inhibit misuse of tailings, to stabilize tailings against erosion and contamination of land and water, to minimize gamma exposure, and to avoid contamination of ground water from tailings. A radon emission limit of 20 pCi/m^{2}s or less would require use of a sufficiently thick earthen cover to achieve all of these objectives. A limit of 60 pCi/m^{2}s or greater could be satisfied in many cases by a cover too thin to effectively inhibit misuse. Such a cover would also permit higher individual risks (up to 3 in 10^2) and would leave 20 percent of the potential health impact on populations uncontrolled. Our analysis shows that a limit of 20 pCi/m^{2}s is also cost-effective for eliminating most (95%) health effects in regional and national populations from radon released directly from the pile. Such a limit would also reduce maximum individual risks to residents near tailings piles to less than one in 1000. We concluded that levels higher than 20 pCi/m^{2}s are not justified, based on the cost-effectiveness of reduction of cancer deaths in populations, the high maximum individual risks involved at higher levels, and the likelihood that control to a level of 20 pCi/m^{2}s is reasonably achievable.

The risk to people who live permanently very close to tailings piles can still be relatively high, up to 1 in 1000 for lifetime residency, for a limit of 20 pCi/m^{2}s. However, the practicability of providing more radon control by requiring design for lower levels of emission falls rapidly below 20 pCi/m^{2}s. We note that no pile has ever been protected by such a cover; that is, covers with defined levels of control and longevity are undemonstrated technology. The design of covers to meet a specific radon emission limit at these low levels must be based on measurements of properties of local covering materials and prediction of local parameters, such as soil and tailings moisture, over the long term. Because of uncertainties in measuring and predicting these parameters, the uncertainty of performance of soil covers increases rapidly as the stringency of the control required increases. Thus, in the case of lower levels, the primary issue becomes whether conformance to a design standard for such levels is practicably achievable. There is some field information available regarding the practicality of reduction of radon emissions to levels approaching background. Tests conducted at a pile in Grand Junction, Colorado, showed that test plots of 3-meter thick covers made from four different earthen combinations reduced radon emissions to values ranging from 1.0 + 1.1 to 18.3 + 25.2 pCi/m^{2}s. The efficiencies of these covers ranged from 88.8 percent to 99.7 percent. These results apply to the first two years after emplacement, and do not reflect performance after long-term moisture equilibrium is achieved (some moisture contents were still considerably elevated over prevailing levels). We believe results like these can generally be expected, because the radon control characteristics of earthen materials used for covers will vary from site to site. Three of the four covers studied satisfied 20 pCi/m^{2}s with a reasonable degree of certainty over the term of the test. The other cover (18.3 + 25.2 pCi/m^{2}s) was uncompacted and its poor performance can therefore be discounted. Exactly how much thicker these covers would need to be to reliably achieve a lower limit (e.g., 6 or 2 pCi/m^{2}s) is not known. Experts commented during hearings on the standards that, although covers can be designed to meet such levels as 20 pCi/m^{2}s, estimation models are not reliable at significantly lower emission levels.

We concluded that achieving conformance with a radon emission standard that is significantly below 20 pCi/m²s (6 or 2 pCi/m²s, for example) clearly would require designers to deal with unreasonably great uncertainty for this undemonstrated technology. That is particularly so because EPA is already requiring a margin of safety in calling for any control system to meet the designated emission level with reasonable assurance over 1000 years. Given the predictive uncertainties in designing to meet this standard, EPA judged that to force an accounting for a second set of predictive uncertainties by forcing the standard to very low nominal levels would be to exceed the limits of reasonably available technology.

The risk from radon emissions diminishes rapidly with distance from the tailings pile (declining by a factor of three for each doubling of the distance beyond a few hundred meters). There currently are only about 30 individuals living so near to active piles that they might be subject to nearly maximum annual post-disposal risks. We expect that the actual number of people who might experience near maximal lifetime risk will be smaller, since they would have to maintain lifetime residence in the land area immediately adjacent to a tailings piles. In sum, we believe that the probability of a substantial number of individuals actually incurring these maximum calculated risks is small.

We conclude that it is not reasonable to reduce the emission standard below 20 pCi/m²s because of: (1) The uncertainty associated with the feasibility of implementing a requirement for a significantly lower standard, (2) the small increase in total health benefits associated with such thicker covers, and (3) the limited circumstances in which the maximum risk to individuals might be sustained.

As noted above, the 20 pCi/m²s mission limit was selected to meet the stated objectives of reducing the likelihood of misuse, spreading due to erosion, and control of radon emissions after a thorough evaluation of the current existing information on the technical and economic aspects of alternative levels of control. EPA recognizes the limitations inherent in this information, since no pile has yet been disposed of. Better information may well become available within the next several years as DOE proceeds with the disposal program for inactive piles. Therefore, consistent with Section 275(b)(2) of UMTRCA, EPA intends to continue to monitor these efforts over the next several years and will propose revising these standards if subsequent technical and economic information shows modifications are warranted.

The standard requires that disposal be designed to provide "reasonable assurance" that radon emissions will not exceed 20 pCi/m²s (averaged over the disposal area) for 1000 years. Some commenters expressed the opinion that the meaning of this term was not clear. A key word in this requirement is "designed," since we do not intend compliance with a 1000-year requirement to be determined by monitoring. "Reasonable assurance" in the design of covers means the radon emission limit should be expected to be achieved, over the required term, with a degree of assurance commensurate with the "reasonable assurance" of longevity discussed in the preceding section. Thus, in designing the cover the uncertainties in attenuation characteristics of material used should be taken into account in a conservative manner. This will tend to increase the cover thickness required over that calculated from "best estimated" values, which would yield an approximately equal probability of achieving above or below the design level. An example of uncertainty to be considered is that in the long-term equilibrium value of moisture to be expected in the cover material (i.e., over 1000 years), even though the cover material may be sprayed with water when it is laid down and compacted, and layers of coarse materials introduced to inhibit capillary action. Such spraying and layers increase the moisture (and therefore attenuation) of the cover in the near term, but it is the long-term equilibrium moisture content which governs the performance of the cover over most of its useful life. Other factors include uncertainty in measured diffusion characteristics of the particular earthen materials used (for given moisture content), and in the long-term equilibrium moisture content of the tailings themselves. In summary, we intend that the design requirement for "reasonable assurance" should lead to thick durable covers that have a substantial likelihood of maintaining radon emissions below the 20 pCi/m²s limit for 1000 years.

A related matter is implementation of the specification that the standard for radon emission applies to the "average" value of the release rate. This averaging is to be carried out in two ways. First, it applies over the spatial extent of any disposal area. Thus, anticipated variations due to different concentrations of radium in different parts of the pile, or minor cracks or the effects of burrowing animals and plant roots are to be averaged over, since it is the net radon from the entire tailings pile that is of significance to health. Second, the averaging is specified to apply over a time period of at least one year. Thus, daily and seasonal variations in radon emission are to be averaged over, since these are also not of significance to public health. Finally, this averaging may extend over longer periods to accommodate normal fluctuations in soil moisture content due to short-term climatic variations. Thus, the lowest recorded values of soil moisture content should not be used; rather, the average values are appropriate. Such averages should not, however, extend to times as long as the normal human lifespan, since that could result in a significant alteration in the level of protection of public health. Similarly, averaging performance over the entire period of longevity of the cover is not within the meaning of the standard.

3. Relationship to the Clean Air Act Emission Standard Requirements

The Clean Air Act also requires that EPA provide public health protection from air emissions from tailings piles. Further, EPA is publishing an ANPR to consider additional control of radon emissions during the operational phase of mills. This discussion relates to the disposal phase.

The Clean Air Act requires that the Administrator establish a standard at the level which in his judgment provides an ample margin of safety to protect the public health from hazardous air pollutants. The Agency published proposed rules for radionuclides as National Emission Standards for Hazardous Air Pollutants (NESHAPS) on April 6, 1983 (48 FR 15076). The proposed rule addressed all of the sources of emissions of radionuclides that EPA had identified. The proposed rule either provided standards for various source categories or proposed not to regulate them and provided reasons for that decision.

In the proposed NESHAPS for radionuclides EPA did not propose additional standards for uranium mill tailings, because the Agency believed the EPA standards to be established under UMTRCA would provide the same degree of protection as required by Section 112 of the Clean Air Act. The Agency explained that Congress did not describe the degree of protection that provides an ample margin of safety, nor did it describe what factors the Administrator should consider in making judgments on the appropriate standard. The Agency indicated that it

did not believe that it was reasonable to establish standards for nonthreshold pollutants like radionuclides at levels that preclude any possible risk. EPA concluded that it should follow an approach that would allow it to consider various factors that influence society's health and well being. Therefore, EPA chose to consider the following factors in deciding whether standards are needed and the appropriate level of such standards:

1. The radiation dose and risk for nearby individuals;
2. The cumulative radiation dose and health impacts in populations;
3. The potential for radiation emissions and risk to increase in the future;
4. The availability, practicality, and cost of control technology to reduce emissions, and
5. The effect of current standards under the Clean Air Act or other applicable authorities.

The first three factors are used to assess the likely impact of emissions on the health of individuals and large populations and to estimate the potential for significant emissions in the future. The fourth factor enables EPA to assess whether state-of-the-art control technologies are currently in use and whether there are any practical means of reducing emissions through control technology or other control strategies. The last factor allows EPA to assess whether regulations or standards that have been established to control other pollutants are also minimizing releases of radionuclides.

The dose and risk for the individuals nearest a site are often the primary considerations when evaluating the need to control emissions of radionuclides. Controlling maximum individual dose assures that people living nearest a source are not subjected to unreasonably high risk. Further, protecting individuals often provides an adequate level of protection to populations living further away from the source.

EPA believes that cumulative dose and health impacts in populations are also an important factor. The cumulative radiation dose and health impact are determined by adding together all of the individual doses and risks that everyone receives from an emission source. This factor can sometimes be more important than the maximum individual risk in deciding whether controls are needed, particularly if an extremely large population may be exposed at low levels. The aggregate dose and population impact can be of such magnitude that it would be reasonable to require a reduction in the total impact even though, if the maximum individual dose were considered alone, one might conclude that no further controls are needed. For mill tailings, although population doses and health impacts were an important part of our consideration, doses to the most exposed individual were equally important.

In addition, EPA considers the potential for emissions and risk to increase in the future, even though the current projected maximum individual and population risks may be very low. In this case, we do not anticipate significant future increases in the size of this industry, although populations around these sites may increase, as the national population increases.

The availability and practicality of control technology are important in judging how much control of emissions to require. EPA believes that the standard should be established at a level that will, at least, require use of best available technology. Additional actions, such as forcing the use of undemonstrated technology, closure of a facility, or other extreme measures may be considered if significant emissions remain after best available technology is in place or if there are significant emissions and there is no applicable demonstrated control technology. EPA defines best available demonstrated technology as that which, in the judgment of the Administrator, is the most advanced level of controls adequately demonstrated, considering economic, energy, and environmental impacts. We concluded that requiring the use of undemonstrated technology was appropriate for mill tailings, since their emissions are significant and there is no applicable demonstrated control technology.

Finally, EPA believes it is reasonable to consider whether other EPA standards are achieving approximately the same goal as the Clean Air Act, i.e., protecting public health with an ample margin of safety. In cases where other standards are providing comparable control, EPA believes it is appropriate not to propose redundant standards under the Clean Air Act. There would be no benefits because the public health would already be protected with an ample margin of safety, but there could be unnecessary costs associated with implementing an additional standard.

The Clean Air Act specifies that the Administrator promulgate emissions standards to protect the public health. The Administrator is also authorized to promulgate design, equipment, work practice, or operational standards, or a combination, if it is not feasible to prescribe or enforce emission standards. The Administrator can conclude that "it is not feasible" if a hazardous pollutant cannot be emitted through a conveyance or the use of the conveyance would be contrary to laws, or if measurement methodologies are not practicable due to technological or economic limitations. As noted above, we will consider the need for such standards for the operational phase of mills.

With respect to these disposal standards, EPA has concluded that design to provide reasonable assurance that the release of radon will not exceed 20 pCi/m^2s for a period of 1000 years is appropriate. The level of the standard was selected after considering potential impacts both on individuals and large population groups. We consider that the uncertainties involved in design to various levels and durations of control are important factors. Potential increases in the number of mill tailings piles due to future needs for uranium were also considered. In addition, the cost and socio-economic impact of the standard and other alternatives were considered. In light of all of these considerations, EPA judges it appropriate that the standard require a level of control not heretofore applied, but for which the design uncertainties that must be accommodated are within the range of practical feasibility.

It would be desirable to reduce potential maximum individual risk further. However, the uncertainties associated with attempting designs to achieve assurance of conformance to a significantly lower standard through use of thicker covers are, we believe, unreasonably great, and would impose large and unpredictable costs. Somewhat thicker covers than bare (or average) compliance with a 20 pCi/m^2s standard would require will, moreover, be called for by the requirement to provide reasonable assurance of compliance. (Other types of control are even more costly and do not provide the comprehensive protection thick covers provide.) Consequently, we have concluded it would be unreasonable to impose a standard below the 20 pCi/m^2s required by this rule.

The Agency believes that the standards for the disposal of uranium mill tailings established in this rule provide protection of public health comparable to that which might be established under the Clean Air Act, because the considerations on which these standards are based are comparable to those the Agency uses in establishing standards under Section 112 of the Clean Air Act. However, the final determination will be made in the

Section 112 rulemaking on radionuclides.

4. Radon Concentration vs. Emission Rate Limits

A radon emission rate limit was proposed as a design standard for the disposal of tailings. Some commenters suggested that we should instead establish a concentration limit for radon in air at locations where people would be exposed. They expressed the view that EPA should establish standards based on health risk alone and that a concentration limit applied where people can live is therefore more suitable.

A design limit for emissions addresses a primary goal of these standards, the placement of a thick, durable earthen cover over the tailings, because the limit relates directly to the thickness of the cover and requires direct control of radon emissions. It also is in a form which conforms to the requirements of the Clean Air Act, which specifies direct control of emissions from a source. Under the suggested air concentration limit, transport calculations would be needed to estimate emission rates for use in determining cover thicknesses. We believe no purpose is served by introducing the uncertainty of this extra (transport) variable into the calculations for cover thickness. In addition, the thickness of the cover required to satisfy such a standard could be arbitrarily reduced (to zero in many cases) by use of fences to restrict access. Such a situation would be unsatisfactory because it would: (1) Require permanent (for 1000 years) control of access by institutional means, and (2) would not require a cover sufficient to deter misuse. In summary, if such a standard is comparable to an emission limit, it is needlessly complex, due to the introduction of transport calculations. If not, it affords less protection by permitting dispersion instead of control.

5. Cleanup Standards

Commenters expressed confusion regarding the purpose and applicability of the proposed § 192.32(b)(2). We intended this section to distinguish disposal areas for tailings piles from other land areas on disposal and/or licensed sites that are sufficiently uncontaminated by tailings as to not require application of the disposal standards of § 192.32(a). The definition of "disposal area" and the language of § 192.32(b) have been revised to clarify these objectives.

Some commenters objected to the proposed definition. On the assumption that it was a cleanup standard they argued it is not necessary to clean up land which will be converted to government ownership upon closure, since a government agency could control use of the land. Also, they argued that even if the government allowed use of the land, including residential use, "no reliable evidence exists to indicate that levels exceeding the proposed cleanup standard would necessarily convert to indoor radon daughter exposures of sufficient magnitude to constitute significant health risks."

EPA believes there are good reasons not to leave contaminated land (other than areas meeting the disposal standards) at former milling sites. First, the contamination may spread further, and thereby necessitate cleanup of adjacent land or properties. High indoor radon levels clearly can result if houses are built on contaminated land. Second, there are significant radiation risks (identified in the FEIS and DEIS) from pathways other than inhalation of indoor radon decay products, including external (gamma) radiation and inhalation of windblown particulates. Finally, the government agency accepting ownership of contaminated land would have to impose additional control and, possibly, incur the costs to maintain such control. EPA has decided not to change the proposed levels which define on-site land that need not satisfy the standards applicable to disposal areas.

Finally, some commenters suggested that we issue standards for the cleanup of any off-site land and buildings that may contain tailings from licensed mills. There was an implication in some comments that establishing the responsibility of any party to perform remedial actions for such sites could be affected by whether or not EPA had issued cleanup standards. EPA has issued cleanup standards (40 CFR Part 192, Subpart B) for the Federal cleanup program for off-site tailings from 24 inactive processing sites that was established under Title I of UMTRCA. Sites for which a license for uranium or thorium production was in effect on or after January 1, 1978, are excluded from coverage under Title I. We note, however, that the standards (40 CFR Part 192, Subpart B) we have already issued for the Title I program would be suitable for application to off-site contamination from active mills.

6. Wet Sites vs. Dry (Arid) Sites

Several commenters from Virginia and Illinois expressed concern regarding the applicability of the standards to wet sites, i.e., locations where annual average precipitation exceeds annual average evapotranspiration. EPA stated in the **Federal Register** notice accompanying the proposed standards that if uranium mining and milling is conducted in wet regions, the adequacy and appropriateness of the standards may have to be reviewed, particularly the water protection requirements. Based on this statement the commenters were concerned that EPA intended to apply less stringent standards for tailings control at wet sites.

Our remarks concerning wet sites in the preamble for the proposed standards were intended only to acknowledge that all current U.S. uranium mills are located in arid and semi-arid areas, and that we have less experience with many of the control measures needed to comply with the standards under wet than under dry conditions.

We have modified the final standards to require environmental and health protection in all regions of the United States. EPA developed the basic ground water protection provisions in these standards for national application to hazardous waste sites. The New Source Performance Standards, 40 CFR 440.34, protect surface water by prohibiting discharges from new mills except for the amount by which precipitation may exceed evapotranspiration. Any discharged water must satisfy concentration standards corresponding to use of the best available demonstrated treatment technology. We have modified our proposal to not apply the requirements of 40 CFR 264.228 that are referenced by 40 CFR 264.221 ("Design and Operating Requirements") in order to avoid the post-closure "bathtub" effect that could otherwise occur in wet locations. For mills locationed in regions of net precipitation the final standard applies 40 CFR 264.228(a)(2)(iii)(E), which requires the closure cover to be less permeable than any liner beneath the tailings so the pile will not fill with water.

We believe these and the other provisions of the final standards provide adequate protection for wet and dry areas, considering differences in both net precipitation and population density.

C. Ground Water Standards

1. Summary of the Proposed Standards

Consistent with the standards EPA issued under the SWDA for hazardous wastes (47 FR 32274–388, July 26, 1982) the standard for tailings piles has two parts: (1) A "primary" standard that requires use of a liner designed to prevent migration of hazardous substances out of the impoundment, and (2) a "secondary" ground water protection standard requiring, in effect, that any hazardous constituents that

leak from the waste not be allowed to degrade ground water. The primary standard applies to new portions of new or existing waste depositories. The secondary standard applies to new and existing portions, the point of compliance being at the edge of the waste impoundment. The specific hazardous substances and concentrations (i.e., background levels) that define noncompliance with the secondary standard at each site will be established for uranium mill tailings by NRC and Agreement States. The SWDA rules, however, permit alternate concentration limits to be established when they will not pose " * * * a substantial present or potential hazard to human health or the environment" as long as the alternate concentration limit is not exceeded. The rule also allow "hazardous constituents" to be exempted from coverage by the permit based on the same criterion. EPA determines the alternate concentration standard or exemption under the SWDA; EPA's concurrence would be required under the proposed standards for tailings.

EPA recognized in proposing these standards that UMTRCA continues the dual regulatory system for uranium fuel cycle facilities under which EPA sets health and environmental standards and NRC establishes implementing technical, engineering, and management regulations. Under the SWDA, EPA performs all such regulatory functions for chemical hazardous wastes. UMTRCA promotes uniform Federal regulation of wastes, however, by requireing NRC's regulations for these wastes (i.e., uranium and thorium mill tailings) to be "comparable" to requirements EPA establishes for similar hazards under the SWDA.

2. The Primary Standard

The primary standard, 40 CFR 264.221, can usually be satisfied only be using liner materials (such as plastics) that can retain all wastes. Exemptions permitting use of other liner materials (such as clay) that may release water or small quantities of other substances or, in some cases, permitting no liner may be granted only if migration of hazardous constituents into the ground water or surface water would be prevented indefinitely.

Some commenters stated that no liner technology is available which would achieve the goal of the primary standard, i.e., preventing waste from entering the ground or water. They stated that synthetic liners would tear under the strains of tailings and heavy equipment, or that they could not reliably be properly installed in such large impoundments. Other commenters noted that thicker plastic liners than that have been conventional or double liners would be more successful. A number of commenters argued that clay liners may have important advantages over plastics, but questioned whether clay liners could satisfy the conditions for an exemption.

The rulemaking record does not establish that either clay or plastic liners have unequivocal advantages or disadvantages. EPA considered these technologies when it developed the SWDA liner requirement and decided to require a liner that is capable, as a matter of engineering, of preventing migration of waste into the ground and water. The fact that failures may occur did not justify establishing a less protective standard. Recognizing that such liners may sometimes fail, EPA also issued the secondary standard to limit the consequences of such failures. UMTRCA requires standards for tailings to be consistent with the standards EPA established under SWDA. We have concluded that commenters did not establish that conditions at tailings impoundments are sufficiently different from conditions EPA considered in developing the SWDA standard to justify departures from that standard.

Under these standards, all new waste storage areas (whether new waste facilities or expansions of existing piles) are subject to the primary standard—the liner requirement. If new wastes are added to an existing pile, however, the pile must comply with the secondary standard—the hazardous constituent concentration standards for health and environmental protection. Whether for a new or existing pile, if the secondary standards are found not to be satisfied and subsequent corrective actions fail to achieve compliance in a reasonable time, the operator must cease depositing waste on that pile.

3. The Secondary Standard and the Complementary Roles of EPA and NRC

Commenters correctly noted that virtually all existing tailings piles have contaminated ground water beyond the edge of their impoundments. The reason is that many of these piles were constructed without liners and before NRC increased regulatory requirements in the late 1970's. NRC's recent regulatory practice has been to require remedial actions on a cost/benefit basis when underground contaminant plumes threaten to degrade or have already degraded the potential usefulness of offsite water.

Many commenters, including NRC, argued that the existing practices for tailings piles sufficiently protect health and the environment. They noted that under the proposed standard virtually all existing mill operations would have to either request exemptions and alternate standards and/or begin remedial actions. Commenters stated that regulating by exceptions is inappropriate. NRC and others further argued that an EPA concurrence role for exemptions and alternative standards that would be invoked at virtually all existing mills was inconsistent with UMTRCA's foreclosure of any EPA permitting for tailings under UMTRCA or SWDA.

We have made modifications of the rule to both improve its administration and clarify its objectives.

EPA considered a wide range of alternatives before adopting the secondary standard, including a policy similar to NRC's. When EPA issued the SWDA rules, it recognized that many existing hazardous waste sites had operated for many years without liners and would not immediately satisfy the secondary standard. EPA created the opportunity for exemptions and alternative concentration standards to avoid remedial actions where such exceptions would "not pose a substantial present or potential hazard." In establishing such exemptions or alternative standards, the SWDA rules require EPA to consider specified fate-related and health and environment-related factors (see 40 CFR 264.93(b) and 264.94(b)). "Fate" refers to the destiny of contaminants released from the waste under site-specific hydrogeochemical conditions.

EPA agrees that administrative burdens related to the dual regulatory system under UMTRCA should be minimized. We have concluded that it is appropriate under UMTRCA that the regulatory agencies (NRC and Agreement States) perform or approve analyses of fate, because this involves primarily technical and site-specific judgments. EPA does not believe, however, that it can or should delegate its responsibility for setting health and environmental protection standards. This was the reason for proposing to require EPA's concurrence with exemptions and alternative concentration standards recommended by regulatory agencies for site-specific licenses. Therefore, in determining situations requiring concurrence, EPA will consider the health and environment-related factors in §§ 264.93(b) and 264.94(b).

Administrative burdens can be further reduced by permitting the regulatory agency to exercise discretion, pursuant to the requirements of 40 CFR 264.94(b),

for establishing alternate concentration limits, as long as any contamination permitted will remain close to the pile and is within the boundaries of the licensed site. Such situations can be identified solely through analysis of fate, and we have decided not to require concurrence in such cases. This avoids the dual administrative process for alternative concentration standards under conditions where they certainly would be requested and granted. We believe this is appropriate. The contamination would be very limited in extent and concentration, can be expected to eventually dissipate after the site is closed in accordance with our closure standard, and these sites will be under effective government jurisdiction during this period. We have chosen 500 meters as the maximum distance for the purpose of this section of the rule, because it limits contamination to a small area, and, considering the size of disposal areas, will provide an adequate margin of distance to implement corrective action programs if they are required to prevent offsite contamination.

The revised standard for existing piles should be implemented in a manner consistent with the following scenario. Monitoring wells should be established at the edge of the tailings at the compliance point. This monitoring location is unique in providing the earliest practical notice of contaminants migrating from the impoundment. The regulatory agency should determine through further monitoring and fate analysis whether hazardous constituent levels now and in the future will satisfy the secondary standard within 500 meters or any closer site boundary, what corrective actions are appropriate to correct any on-site contamination, and, if some contamination is found to be not practicable to eliminate, the alternate concentration limit at the edge of the tailings to indicate the minimum practicable on-site contamination. If environmental contamination is a realistic possibility (or fact) beyond 500 meters (or the site boundary), remedial actions must be taken, or alternative concentration standards (with EPA concurrence) are required.

Unlike EPA's role in SWDA, EPA's role for controlling hazardous materials from uranium tailings under UMTRCA is limited to setting standards and does not include an implementing responsibility. That responsibility is vested in the NRC and the States as the licensing agencies under Title II of UMTRCA (Section 84a(3)) and will be carried out through regulations set by the NRC, with the concurrence of the Administrator, upon promulgation of these standards by EPA.

Many of the factors that must be considered by NRC in carrying out its responsibilities for enforcing EPA's standards are discussed in the pertinent section of the notice proposing these standards (48 FR 19522–5). For convenience, we repeat here the listing of sections of the SWDA's regulations which relate to the separate EPA and NRC responsibilities. EPA's responsibilities to establish standards under Section 206 of UMTRCA are carried out through adoption of all or part of the following sections of the SWDA regulations:

i. Subpart F:

40 CFR 264.92 Ground water protection standard

40 CFR 264.93 Hazardous constituents

40 CFR 264.94 Concentration limits

(These three sections are modified and adopted as § 192.32(a)(2))

40 CFR 264.100 Corrective action program

(This section is modified and adopted as § 192.33)

ii. Subpart G:

40 CFR 264.111 Closure performance standard

(This section is adopted as part of § 192.32(b)(1))

iii. Subpart K:

40 CFR 264.221 Design and operating requirements for surface impoundments

(This section is modified and adopted as § 192.32(a)(1))

NRC's responsibilities under UMTRCA are to implement EPA's standards and to "* * * insure that the management of any byproduct material * * * is carried out in such a manner as * * * conforms to general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the SWDA, as amended." EPA will insure that NRC's regulations satisfy these admonitions through its concurrence role. Relevant SWDA regulations are those embedded in Subparts A (except Section 264.3), B, C, D, E, F, G, H, and K. Examples of areas which NRC must address in discharging these responsibilities involve functions under the six sections listed immediately above which are incorporated into these EPA standards, and the following sections of the SWDA regulations:

i. Subpart F:

40 CFR 264.91 Reequired programs

40 CFR 264.95 Point of compliance

40 CFR 264.96 Compliance period

40 CFR 264.97 General ground water monitoring requirements

40 CFR 264.98 Detection monitoring program

40 CFR 264.99 Compliance monitoring program

ii. Subpart G:

40 CFR 264.117 Post-closure care and use of property

iii. Subpart K:

40 CFR 264.226 Monitoring and inspection (of impoundment liners), as applicable

40 CFR 264.228 Closure and postclosure care, as applicable.

There are several of these SWDA regulations that specify monitoring after closure of an impoundment. Monitoring is a compliance activity conducted to assure that health and environmental standards are being met. The regulatory agency is responsible for establishing such requirements, including post-closure monitoring consistent with the SWDA regulations. The period over which post-closure monitoring is normally required under SWDA is 30 years. The regulatory agency should recognize, however, that monitoring of ground water for shorter or longer periods may be needed for the specific sites where tailings are located and, when appropriate, change this requirement.

A difficult consideration regarding the closure of a tailings impoundment is deciding when disposal must take place. Several factors must be evaluated in this regard, including: (1) The likelihood that a mill will resume operations; (2) the specific condition of the tailings impoundment, such as the fraction of design life remaining, and environmental contamination problems, such as windblown tailings and the likelihood that significant quantities of tailings might be spread by flooding; and (3) the cost of maintaining releases from the inactive pile in conformance with the regulations which apply to operating mills prior to disposal (including maintaining radon emissions at ALARA levels). Evaluating these factors may be difficult and complex. However, although an adequate drying-out period makes possible long-term isolation of the tailings and stabilization of the piles, radon emissions will be greater during this period than before or after disposal. For this reason the regulatory agency should require, once a pile is allowed to begin to dry out, that disposal proceeds in an expeditious fashion, and that new liquids are not introduced to the pile so

that a new drying-out period will be incurred.

The period required for the tailings to dry out is highly dependent on local meteorology. This precludes establishing a single fixed time for disposal of the tailings. We have concluded that the regulatory agency should exercise the responsibility of determining when disposal should occur, by site-specifically judging the advantages and detriments associated with all pertinent factors. This responsibility is governed by the need to conform to regulations established to satisfy the SWDA, by 40 CFR Part 190, and by the ALARA requirement on radon emissions.

NRC's closure regulations must be comparable, to the maximum extent practicable, to requirements under the SWDA, wherein short closure periods (90 and 180 days) are specified. Drying out of piles will take much longer. However, disposal should occur promptly when piles are allowed to dry out. In addition, some of the older mill sites already contain essentially completed (filled) tailings piles. The regulatory agency should promptly identify and require disposal of such tailings.

EPA and NRC are coordinating their efforts to insure health and environmental protection from uranium byproduct materials. In particular, we are working closely with the NRC to assure that NRC's general requirements for ground water protection will be comparable, to the maximum extent practicable, to EPA's requirements under the SWDA for similar hazardous materials.

4. Timing of Corrective Actions

The proposed standard requires corrective actions for ground water to be initiated within one year after a noncompliance determination is made. Commenters expressed concern that it may take longer than one year to devise and implement an effective corrective action, for both technical and administrative reasons. Based on these considerations, EPA has revised the time limit for implementation of corrective actions to eighteen (18) months. We also note that § 264.99 of SWDA regulations require submission of corrective action plan within 180 days. This provision remains unaffected by the above revision.

Once corrective actions have begun, the regulatory agency should evaluate their effectiveness and determine whether to continue, alter, or discontinue the actions. Because corrective actions are very site-specific such determinations cannot be made under the same uniform, pre-established schedule for all sites. It is the regulatory agency's responsibility, however, to assure that necessary decisions are rendered in a timely fashion. Acceptable plans for corrective actions should offer a high likelihood of achieving compliance with the standards. Furthermore, corrective actions which, once begun, show inadequate promise of achieving compliance should result in the regulatory agency's promptly disallowing the addition of new tailings to a noncomplying tailings pile.

5. Nonhazardous Materials

Comments were received on two matters regarding the contamination of ground water by nonhazardous materials. (They include chlorides, sulfates, manganese, and total dissolved solids, amoung others.) At high concentrations, these materials can make water unfit for use for other than health related reasons.

One view of these materials held that several of them are more mobile than hazardous materials. Thus, they precede the hazardous material in contaminating ground water. Ground water monitoring for these materials allows the prediction of future ground water contamination by hazardous materials. This detection scheme might therefore provide an early warning of ground water contamination and allow early corrective actions to be taken, thereby effectively preventing ground contamination by hazardous materials.

EPA agrees with this comment. Analyzing water samples for the substances from tailings that are expected to be most mobile in a given ground water environment is a very useful feature of site-specific monitoring requirements. We note that § 264.98 already contains such a requirement and that the implementing regulatory agencies may be expected to establish such (or comparable) requirements.

A second view held that much of the ground water in the Western States is already contaminated with nonhazardous materials to an extent that it is unsuitable for use. These are primarily shallow aquifers (or uppermost aquifers) which would be the first to be contaminated by tailings materials. Since these ground waters are already contaminated, the argument goes, there is no need to prevent additional contamination.

This comment would require changing the ground water protection policy EPA has established for hazardous wastes under the SWDA rules. UMTRCA requires standards for tailings to be consistent with the SWDA standards. EPA has already considered the views expressed in these comments when it established its policy under the SWDA (47 FR at 32286, July 26, 1982). We do not think this rulemaking for byproduct materials is an appropriate forum in which to reconsider EPA's policies for hazardous wastes.

6. Neutralization of Tailings

Some commenters recommended that EPA require neutralization of tailings as a method to protect ground water. Neutralization is chemical treatment that would make the tailings neither acid nor alkaline. When tailings are neutralized many hazardous constituents are taken out of solution and thereby are less prone to move through the earth and into ground water.

An EPA study of tailings neutralization in 1980, discussed in the FEIS, identified several issues regarding neutralization. First, some of the hazardous constituents in tailings form complex compounds that remain in solution over wide ranges of acidity and alkalinity. Selenium, arsenic, and molybdenum—all constituents of tailings—are particularly troublesome in this regard. Adequate control would require careful operation of the neutralization process. Second, the costs of neutralizing the tailings are significant, about the same as installation of a liner. Most of the cost is due to the need for a sludge storage lagoon. Finally, neutralization would not preclude the need for a liner.

The structure of regulation established by UMTRCA consists of generally applicable environmental standards established by EPA and regulations to implement these by NRC. Requirements for specific control methods, such as neutralization, are left to the implementing agency, to be used, as required, to ensure that EPA's general standards are satisfied. In view of the above, EPA has concluded that a standard requiring neutralization of tailings is inappropriate.

D. Procedural Issues

1. Molybdenum and Uranium Improperly Listed Under SWDA Requirements

Comments were received stating EPA improperly proposed listing molybdenum and uranium as hazardous constituents, because SWDA listing procedures were not followed.

EPA listed molybdenum and uranium as hazardous constituents only for purposes of controlling uranium and thorium byproduct materials. EPA does not intend in this rulemaking to add molybdenum and uranium to the SWDA list of hazardous constituents, 40 CFR part 261, Appendix VIII. Therefore, the

procedure we followed is proper. Clarification of this matter has been added to § 192.32(a)(2) of the final standard.

2. Inclusion of Thorium in the Standards

Several commenters pointed out that the DEIS contained no background supporting information for the thorium standards (Subpart E) and recommended deleting the thorium standards from this rule. Commenters also stated that there are significant differences in the physical and chemical characteristics and the radiological risk between uranium and thorium. They concluded, therfore, the EPA should not substitute the same requirements for thorium as for uranium, as was proposed.

The FEIS contains appropriate discussions of thorium and a review of the implications of the radiological differences between thorium and uranium for the level of protection provided, the cost of control, and the feasibility of implementation of these standards. These effects are sufficiently small for EPA to conclude that the thorium standards should be promulgated as proposed.

IV. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. We have not classified this rule as major, since it will not cause significantly large incremental costs above those which must be incurred in the absence of these regulations. We have prepared a Regulatory Impact Analysis (RIA), however, since there are wide variations in views on the extent of needed environmental controls in the uranium industry.

A. Benefit-Cost Analysis

The RIA examines the benefits and costs of selected alternative disposal standards, for both existing and new tailings piles. As discussed earlier, most of the benefits of tailings disposal cannot be quantified. The benefit we are best able to estimate is the number of lung cancer deaths avoided by controlling the radon emanation from tailings piles. Since the other benefits of disposal—prevention of misuse, ground water protection and prevention of the surface spread of tailings—cannot be quantified (let alone monetized), we could not make a completely numerical determination, within the traditional benefit-cost analysis framework.

We first performed a partial benefit-cost analysis of alternative disposal standards by relating the disposal costs for each alternative to the health effect estimates for direct radon emissions alone. Although this analysis relates only one category of benefit to the entire cost of disposal, it provides useful results to the extent that these benefits are found to be greater than the total cost of control. Second, we performed a cost-effectiveness analysis of alternative standards which assigns different sets of arbitrary weights to the entire range of benefits of tailings disposal. To perform this analysis, we also developed an index which quantifies the relative effectiveness of the disposal methods in providing designated types of control which correspond to the benefit categories. The cost-effectiveness analysis does not address whether the cost increases of tighter controls are worth incurring. Rather, by examining the sensitivity of the results to different choices of weighting schemes for the various benefits, in addition to identifying at what level additional gains in effectiveness start becoming increasingly more expensive, it points out to what degree the choice of standards is sensitive to the relative importance assigned to different types of benefits. Based in part on these analyses, we have made a qualitative judgment that the societal benefits of the standards outweigh the societal costs, considering the long-term continuing train of benefits to society from isolating these hazardous materials from man and the environment.

A range of alternatives was evaluated for protection of public health and the environment. These alternatives included a range of control methods from no control to high levels of control and are summarized below. They do not include different levels of ground water protection, since those requirements must be consistent with standards already established under the SWDA. However, the length of time ground water is expected to be protected is indicated in the assessment of benefits.

Brief descriptions of each alternative follow:

Alternative A. This is the "no standards" case and represents the reference case representing conditions if nothing is done. The piles would remain hazardous for a long time, taking about 265,000 years for the radioactivity to decay to 10 percent of current levels. The radon emission rate is estimated to be 400 pCi/m²s from a typical pile. The background rate for typical soils is about 1 pCi/m²s. The concentration of some toxic chemicals in the tailings is hundreds of times background levels in ordinary soils, so that the potential for contaminating water and land is present and continues indefinitely.

Alternative B. These are "institutional care" cases and represent situations in which maintenance is required to assure the standard is satisfied. B1 specifies no radon emission limit, but requires control of wind-blown tailings and gamma radiation. B2 specifies radon control limits of 60 pCi/m²s and B3 specifies 20 pCi/m²s; both require control of wind-blown tailings and gamma radiation.

Alternative C. These are "long-term passive control" cases and represent situations in which design is for long-term protection using engineered, passive methods requiring no continued maintenance. The radon emission limits examined are:

C1 none
C2 60 pCi/m²s
C3 20 pCi/m²s
C4 6 pCi/m²s
C5 2 pCi/m²s

Disposal methods would be designed to be effective for 1000 years in this case, in addition to providing control of wind-blown tailings and gamma radiation.

Alternative D. These cases assume staged disposal. They do not require continued maintenance and achieve control similar to Alternative C, plus improved control of radon during operations at new tailings piles. The radon emission limits examined are:

D2 60 pCi/m²s
D3 20 pCi/m²s
D4 6 pCi/m²s
D5 2 pCi/m²s

Disposal methods would be designed to be effective for 1000 years in this case, in addition to controlling wind-blown tailings and gamma radiation. Further, additional control of radon is achieved during the operational period at new tailings piles through use of staged disposal.

The costs and the benefits for these alternatives are listed in the accompanying tables. We examined the cost per death avoided from radon emissions for alternative control levels from several viewpoints. This range of viewpoints included the length of time over which health effects should be related to costs and whether nationwide population effects should be included with regional population effects in making benefit-cost comparisons. We conclude that the incremental cost per radon death avoided at a 20 pCi/m²s emission limit is a reasonable expenditure under all scenarios. The range of incremental costs per death avoided at this control level is from

$130,000 (nationwide health effects estimated for 1000 years) to $2.5 million (regional health effects estimated for only 100 years). For the next, more stringent, level of control, 6 pCi/m²s, the incremental costs are also higher: $630,000 to $12 million per radon death avoided. These costs are more uncertain and more likely to have been underestimated. For the next, less stringent, level of control, 60 pCi/m²s, the incremental costs are lower: $70,000 to $1.4 million. Whether or not the expenditure for a control level is acceptable depends on one's view of the relevant factors to be considered in valuing the benefit stream. On a relative basis, the incremental cost increases by at least a factor of 5 for going from the 20 pCi/m²s limit to 6 pCi/m²s, and increase by only a factor of 2 for going from 60 pCi/m²s to 20 pCi/m²s.

The results of our cost-effectiveness analyses, which incorporate different weighting schemes for all the benefits of disposal, indicate that the incremental costs per unit of overall effectiveness are relatively insensitive to the choice of weighting of benefits. The cost-effectiveness of obtaining increased benefits beyond 60 pCi/m²s decreases monotonically by up to factors of two for each incremental level of control for all weighting schemes examined.

B. Economic Impact Analysis

In the RIA, we developed cases for analyzing the industry-wide costs and economic impacts associated with tailings disposal methods assumed to be required for compliance with the alternative standards. Each case represented a different combination of disposal methods applied to both existing and new tailings. The estimated economic impacts include potential mill closures (on a model mill basis) and uranium price increases. We estimated the impacts for each case according to different financial scenarios and different assumptions on the ability of companies to pass-through tailings disposal costs to their customers. The results from this analysis are used to represent the costs and impacts of the proposed standards.

We estimate that compliance with the standards, if other regulatory requirements did not exist, would cost the uranium milling industry about 260 million dollars for all tailings which exist today at licensed sites. If we include all those tailings which we estimate will be generated by the year 2000, based on recent DOE projections, the total cost to the uranium milling industry would be from 310 to 540 million dollars. These costs are present worth estimates (discounted at a 10 percent rate) expressed on a 1983 constant dollar basis. The range in cost is due to different assumptions on what actions are needed to meet requirements for ground water protection for new tailings at existing mills.

We estimate that increases in the price of uranium could range from 2 to 7 percent. In light of the currently poor economic condition of the industry and the threat of foreign competition, it is unlikely that mills will be able to pass through substantial portions of the disposal costs. Using our models and under the assumption of an average cash flow, we estimate that if mills are forced to absorb the entire cost of disposal, no mills would cease operation due to these standards. Under the conditions of no pass-through and lower cash-flow, one small model mill may close. However, we estimate that this closure can be avoided with the limited price pass-through stated above.

These costs and economic impacts are not all attributable to these standards, since some of these costs would probably occur in the absence of these standards due to other regulatory requirements at most sites. These include existing NRC licensing regulations and requirements established by agreement States, and regulations required under Section 84(a)(1) and (3) of UMTRCA. We did not estimate the costs imposed by these other requirements because that would require a site-specific investigation and these requirements have been continuously changing in the past few years (mostly toward more stringent requirements). Therefore, we could only estimate the upper bounds of cost and economic impacts imposed by these standards, and could not estimate the net impact of the standards.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. We believe the analysis discussed above complies with the intent of the Order. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at the docket cited above under "**ADDRESSES.**"

C. Regulatory Flexibility Analysis

This regulation would not have a significant impact on a substantial number of small entities, as specified under Section 605 of the Regulatory Flexibility Act (RFA). Therefore, we have not performed a Regulatory Flexibility Analysis. The basis for this finding is that of the 27 licensed uranium mills, only one qualifies as a small entity and this mill will not be impacted by the standards. Almost all the mills are owned by large corporations. Three of the mills are partly-owned by companies that could qualify as small businesses, according to the Small Business Administration generic small entity definition of 500 employees. However, under the RFA, a small business is one that is independently owned and operated. Since these three mills are not independently owned by small businesses, they are not small entities.

D. OMB Regulations on the Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 U.S.C. 3501, et seq.

TABLE I—COSTS OF ALTERNATIVE STANDARDS FOR TAILINGS CONTROL TO THE YEAR 2000 (MILLIONS OF 1983 DOLLARS)

Alternative standard	Present Worth Costs (10 percent discount rate)(*)		Total cost
	Existing tailings	Future tailings	
A	0	1	1
B1	117	83	200
B2	192	95	287
B3	256	111	367
C1	115	95	210
C2	192	112	304
C3	260	128	388
C4	336	146	482
C5	403	165	568
D2	192	156	348
D3	260	160	430
D4	336	186	522
D5	403	204	607

(*) These cost estimates assume that two-thirds of the future tailings generated at existing mills will be placed in existing impoundments and the other one-third will be placed in new, lined, impoundments. We assume that the average radium contents of existing and future tailings is 400 pCi/g. These costs are our best estimates, but their uncertainty increases as the level of required radon control increases.

TABLE II—BENEFITS OF ALTERNATIVE STANDARDS FOR TAILINGS CONTROL TO THE YEAR 2000 (*)

Stabilization			Radon Control			Water protection
Alternative standard	Chance of misuse	Erosion avoided (y)	Maximum risk(**) of lung cancer (percent reduction)	Deaths avoided		
				First 100 years	Total	longevity (y)
A	Very likely	0	2 in 10^3(0)	0	0	0
B1	Likely	Hundreds	1 in 10^3(50)	300	1,000	100
B2	Less likely	do	4 in 10^3(80)	480	1,500	100
B3	do	do	1 in 10^3(95)	570	2,000	100
C1	Likely	Thousands	1 in 10^3(50)	300	Thousands	100
C2	Less likely	do	4 in 10^3(80)	480	Many thousands	Hundreds
C3	Unlikely	do	1 in 10^4(95)	570	Tens of thousands	1,000
C4	Very unlikely	Many thousands	3 in 10^4(98.5)	590	do	>1,000
C5	do	do	1 in 10^4(99.5)	597	do	>1,000
D2	Unlikely	Thousands	4 in 10^3(80)	480	Several thousands	1,000
D3	do	Many thousands	1 in 10^3(95)	570	Tens of thousands	>1,000
D4	Very unlikely	do	3 in 10^4(98.5)	590	do	>1,000
D5	do	do	1 in 10^4(99.5)	597	do	>1,000

(*) These estimates include the benefits resulting from control of 26 existing piles and 9 projected new piles. No credit is taken for any engineering safety factors incorporated to provide the required "reasonable assurance" of conformance.
(**) Lifetime risk of fatal cancer to an individual assumed to be living 600 meters from center of a model tailings pile.

This standard is promulgated on the date signed.

List of Subjects in 40 CFR Part 192

Air pollution control, Radiation protection, Hazardous materials, Uranium, Environmental protection, Hazardous constituents, Groundwater protection, Radon, Radium, and Thorium.

Dated: September 30, 1983.

William D. Ruckelshaus,

Administrator.

In 40 CFR Chapter I, Part 192 is amended by adding Subparts D and E as follows:

PART 192—HEALTH AND ENVIRONMENTAL PROTECTION STANDARDS FOR URANIUM AND THORIUM MILL TAILINGS

* * * * *

Subpart D—Standards for Management of Uranium Byproduct Materials Pursuant to Section 84 of the Atomic Energy Act of 1954, as Amended

Sec.

192.30 Applicability.
192.31 Definitions and Cross-references.
192.32 Standards.
192.33 Corrective Action Programs.
192.34 Effective Date.

Subpart E—Standards for Management of Thorium Byproduct Materials Pursuant to Section 84 of the Atomic Energy Act of 1954, as Amended

192.40 Applicability.
192.41 Provisions.
192.42 Substitute Provisions.
192.43 Effective Date.

Authority: Sec. 275 of the Atomic Energy Act of 1954, 42 U.S.C. 2022, as added by the Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. 95-604, as amended.

* * * * *

Subpart D—Standards for Management of Uranium Byproduct Materials Pursuant to Section 84 of the Atomic Energy Act of 1954, as Amended

§ 192.30 Applicability.

This subpart applies to the management of uranium byproduct materials under Section 84 of the Atomic Energy Act of 1954 (henceforth designated "the Act"), as amended, during and following processing of uranium ores, and to restoration of disposal sites following any use of such sites under Section 83(b)(1)(B) of the Act.

§ 192.31 Definitions and Cross-references.

References in this subpart to other parts of the Code of Federal Regulations are to those parts as codified on January 1, 1983.

(a) Unless otherwise indicated in this subpart, all terms shall have the same meaning as in Title II of the Uranium Mill Tailings Rediation Control Act of 1978, Subparts A and B of this part, or Parts 190, 260, 261, and 264 of this chapter. For the purposes of this subpart, the terms "waste," "hazardous waste," and related terms, as used in Parts 260, 261, and 264 of this chapter shall apply to byproduct material.

(b) *Uranium byproduct material* means the tailings or wastes produced by the extraction or concentration of uranium from any ore processed primarily for its source material content. Ore bodies depleted by uranium solution extraction operations and which remain underground do not constitute "byproduct material" for the purpose of this Subpart.

(c) *Control* means any action to stabilize, inhibit future misuse of, or reduce emissions or effluents from uranium byproduct materials.

(d) *Licensed site* means the area contained within the boundary of a location under the control of persons generating or storing uranium byproduct materials under a license issued pursuant to Section 84 of the Act. For purposes of this subpart, "licensed site" is equivalent to "regulated unit" in Subpart F of Part 264 of this chapter.

(e) *Disposal site* means a site selected pursuant to Section 83 of the Act.

(f) *Disposal area* means the region within the perimeter of an impoundment or pile containing uranium by product materials to which the post-closure requirements of § 192.32(b)(1) of this subpart apply.

(g) *Regulatory agency* means the U.S. Nuclear Regulatory Commission.

(h) *Closure period* means the period of time beginning with the cessation, with respect to a waste impoundment, of uranium ore processing operations and ending with completion of requirements specified under a closure plan.

(i) *Closure plan* means the plan required under § 264.112 of this chapter.

(j) *Existing portion* means that land surface area of an existing surface impoundment on which significant quantities of uranium byproduct materials have been placed prior to promulgation of this standard.

§ 192.32 Standards.

(a) *Standards for application during processing operations and prior to the end of the closure period.* (1) Surface impoundments (except for an existing portion) subject to this subpart must be designed, constructed, and installed in such manner as to conform to the requirements of § 264.221 of this chapter.

except that at sites where the annual precipitation falling on the impoundment and any drainage area contributing surface runoff to the impoundment is less than the annual evaporation from the impoundment, the requirements of § 264.228(a)(2)(iii)(E) referenced in § 264.221 do not apply.

(2) Uranium byproduct materials shall be managed so as to conform to the ground water protection standard in § 264.92 of this chapter, except that for the purposes of this subpart:

(i) To the list of hazardous constituents referenced in § 264.93 of this chapter are added the chemical elements molybdenum and uranium,

(ii) To the concentration limits provided in Table 1 of § 264.94 of this chapter are added the radioactivity limits in Table A of this subpart,

(iii) Detection monitoring programs required under § 264.98 to establish the standards required under § 264.92 shall be completed within one (1) year of promulgation,

(iv) The regulatory agency may establish alternate concentration limits (to be satisfied at the point of compliance specified under § 264.95) under the criteria of § 264.94(b), provided that, after considering practicable corrective actions, these limits are as low as reasonably achievable, and that, in any case, the standards of § 264.94(a) are satisfied at all points at a greater distance than 500 meters from the edge of the disposal area and/or outside the site boundary, and

(v) The functions and responsibilities designated in Part 264 of this chapter as those of the "Regional Administrator" with respect to "facility permits" shall be carried out by the regulatory agency, except that exemptions of hazardous constituents under § 264.93 (b) and (c) of this chapter and alternate concentration limits established under § 264.94 (b) and (c) of this chapter (except as otherwise provided in § 192.32(a)(2)(iv)) shall not be effective until EPA has concurred therein.

(3) Uranium byproduct materials shall be managed so as to conform to the provisions of:

(a) Part 190 of this chapter, "Environmental Radiation Protection Standards for Nuclear Power Operations" and

(b) Part 440 of this chapter, "Ore Mining and Dressing Point Source Category: Effluent Limitations Guidelines and New Source Performance Standards, Subpart C, Uranium, Radium, and Vanadium Ores Subcategory."

(4) The regulatory agency, in conformity with Federal Radiation Protection Guidance (FR, May 18, 1960, pgs. 4402–3), shall make every effort to maintain radiation doses from radon emissions from surface impoundments of uranium byproduct materials as far below the Federal Radiation Protection Guides as is practicable at each licensed site.

(b) *Standards for application after the closure period.* At the end of the closure period:

(1) Disposal areas shall each comply with the closure performance standard in § 264.111 of this chapter with respect to nonradiological hazards and shall be designed [1] to provide reasonable assurance of control of radiological hazards to

(i) Be effective for one thousand years, to the extent reasonably achievable, and, in any case, for at least 200 years, and,

(ii) Limit releases of radon-222 from uranium byproduct materials to the atmosphere so as to not exceed an average [2] release rate of 20 picocuries per square meter per second (pCi/m^2s).

(2) The requirements of Section 192.32(b)(1) shall not apply to any portion of a licensed and/or disposal site which contains a concentration of radium-226 in land, averaged over areas of 100 square meters, which, as a result of uranium byproduct material, does not exceed the background level by more than:

(i) 5 picocuries per gram (pCi/g), averaged over the first 15 centimeters (cm) below the surface, and

(ii) 15 pCi/g, averaged over 15 cm thick layers more than 15 cm below the surface.

§ 192.33 Corrective Action Programs.

If the ground water standards established under provisions of Section 192.32(a)(2) are exceeded at any licensed site, a corrective action program as specified in 264.100 of this chapter shall be put into operation as soon as is practicable, and in no event later than eighteen (18) months after a finding of exceedance.

[1] The standard applies to design. Monitoring for radon-222 after installation of an appropriately designed cover is not required.

[2] This average shall apply to the entire surface of each disposal area over periods of at least one year, but short compared to 100 years. Radon will come from both uranium byproduct materials and from covering materials. Radon emissions from covering materials should be estimated as part of developing a closure plan for each site. The standard, however, applies only to emissions from uranium byproduct materials to the atmosphere.

§ 192.34 Effective date.

Subpart D shall be effective December 6, 1983.

TABLE A

	pCi/liter
Combined radium-226 and radium-228	5
Gross alpha-particle activity (excluding radon and uranium)	15

Subpart E—Standards for Management of Thorium Byproduct Materials Pursuant to Section 84 of the Atomic Energy Act of 1954, as Amended

§ 192.40 Applicability.

This subpart applies to the management of thorium byproduct materials under Section 84 of the Atomic Energy Act of 1954, as amended, during and following processing of thorium ores, and to restoration of disposal sites following any use of such sites under Section 83(b)(1)(B) of the Act.

§ 192.41 Provisions.

The provisions of Subpart D of this part, including §§ 192.31, 192.32, and 192.33, shall apply to thorium byproduct material and:

(a) Provisions applicable to the element uranium shall also apply to the element thorium;

(b) Provisions applicable to radon-222 shall also apply to radon-220; and

(c) Provisions applicable to radium-226 shall also apply to radium-228.

(d) Operations covered under § 192.32(a) shall be conducted in such a manner as to provide reasonable assurance that the annual dose equivalent does not exceed 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other organ of any member of the public as a result of exposures to the planned discharge of radioactive materials, radon-220 and its daughters excepted, to the general environment.

§ 192.42 Substitute provisions.

The regulatory agency may, with the concurrence of EPA, substitute for any provisions of § 192.41 of this subpart alternative provisions it deems more practical that will provide at least an equivalent level of protection for human health and the environment.

§ 192.43 Effective date.

Subpart E shall be effective December 6, 1983.

[FR Doc. 83-27177 Filed 10-6-83; 8:45 am]
BILLING CODE 6560-50-M

federal register

Friday
October 7, 1983

Part V

Department of Energy

Federal Energy Regulatory Commission

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Volume 979]

Determinations by Jurdisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: October 4, 1983.

The following notices of determinations were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd, Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS — VOLUME 979
ISSUED OCTOBER 4, 1983

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
OKLAHOMA CORPORATION COMMISSION									
-AMERICAN STAR ENERGY & MINERALS COR			RECEIVED:	09/15/83		JA: OK			
8355622	20439	3507302423		103		TILBURY STAR #1	SOONER TREND	100.0	NORTHWEST CENTRAL
-AMOCO PRODUCTION CO			RECEIVED:	09/15/83		JA: OK			
8355632	23442	3515321174		108		HOPKINS UNIT 'B' #2	CEDARDALE N E	8.9	MICHIGAN WISCONSI
8355649	22192	3501720295		108		NEWPORT #1	N RICHLAND	1.0	PUBLIC SERVICE CO
-AN-SON CORPORATION			RECEIVED:	09/15/83		JA: OK			
8355702	25135	3501120215		107-PE		NICHOLSON #1	N GEARY	80.0	MUSTANG FUEL CORP
-ANADARKO PRODUCTION COMPANY			RECEIVED:	09/15/83		JA: OK			
8355572	23672	3509322635		103		HUBBLE A 2-20	ROSCOE NW	191.0	AMINOIL USA INC
-ANCOR PETROLEUM INC			RECEIVED:	09/15/83		JA: OK			
8355685	23523	3507323252		103		LEIF #1-9	SOONER TREND	35.0	CONOCO INC
-ANR PRODUCTION CO			RECEIVED:	09/15/83		JA: OK			
8355594	23443	3509321262		108		DYCHE #1	CHESTER	17.5	MICHIGAN WISCONSI
-APACHE CORPORATION			RECEIVED:	09/15/83		JA: OK			
8355623	21744	3500920509		102-2		PRESTON #1-32		100.0	MICHIGAN WISCONSI
8355612	23520	3501720925		103		SCHWEITZER #1-4		8.9	PHILLIPS PETROLEU
8355613	23519	3501720891		103		WILDS #1-4		8.0	PHILLIPS PETROLEU
-ARCO OIL AND GAS COMPANY			RECEIVED:	09/15/83		JA: OK			
8355700	21651	3507920469		102-4		J L SCHEFFLER RANCH #1	RED OAK MORRIS	109.5	
8355576	23655	3503722610		103		JOHN KOCHEL (MICKEY) NO 11	CUSHING	14.5	ARCO OIL & GAS CO
-BEASLEY OIL CO			RECEIVED:	09/15/83		JA: OK			
8355651	23559	3507323752		103		GOODEN #1	NORTHWEST OMEGA	115.0	WARREN PETROLEUM
-BLAIK OIL COMPANY			RECEIVED:	09/15/83		JA: OK			
8355634	23472	3509300000		108		CHASE #1	SOONER TREND	3.0	UNION TEXAS PETRO
8355635	23475	3500300000		108		GLIDEWELL #1	SOONER TREND	12.0	UNION TEXAS PETRO
8355633	23471	3500320513		108		GOODWIN "A" #1	SOONER TREND	8.0	UNION TEXAS PETRO
8355655	23485	3508300000		108		KRETCHMAR #1	SOONER TREND	5.0	EASON OIL CO
8355636	23476	3500320159		108		MARTENEY #1	SOONER TREND	7.0	UNION TEXAS PETRO
8355637	23477	3500320125		108		PENQUITE #1	SOONER TREND	10.0	AMINOIL USA INC
8355654	23481	3504720362		108		ROSA #1	SOONER TREND	6.0	PHILLIPS PETROLEU
8355618	23487	3500320105		108		SHEPARD #1	SOONER TREND	6.0	AMINOIL USA INC
8355656	23486	3508321236		108		STROTHMAN #1	SOONER TREND	1.0	EASON OIL CO
-BLAND INVESTMENTS			RECEIVED:	09/15/83		JA: OK			
8355599	20975	3514723654		103		HOPKINS #1		56.0	PHILLIPS PETROLEU
-BROADWAY ENERGY CO INC			RECEIVED:	09/15/83		JA: OK			
8355639	23538	3510700000		103		BABE #1		100.0	SNAB CORP
8355611	23540	3503724009		103		ELIAS #1A		50.0	GOLDEN ARROW GAS
-BRUNAR EXPLORATION CO			RECEIVED:	09/15/83		JA: OK			
8355596	21944	3504723186		103		JORDAN #2-28	N E ELKHORN	350.0	AMINOIL USA INC
-CHAMPLIN PETROLEUM COMPANY			RECEIVED:	09/15/83		JA: OK			
8355722	23212	3500300000		103		V O GOODWIN #2	EAST CHANEY DELL	0.0	CHAMPLIN PETROLEU
-CLARK OPERATING SERVICES INC			RECEIVED:	09/15/83		JA: OK			
8355571	23673	3510700000		103		DOUGLASS #1-14		60.0	PHILLIPS PETROLEU
-CLARK RESOURCES INC			RECEIVED:	09/15/83		JA: OK			
8355584	23458	3504723361		103		JUDY 33-1	SOONER TREND	200.0	NORTHWEST CENTRAL
-D & G OIL & GAS CO INC			RECEIVED:	09/15/83		JA: OK			

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8355587	23452	3504723383		103		(OTC #APPLIED FOR) HOXEN #1	ELKHORN	0.0	EASON OIL CO
8355691	23419	3508121994		103		ADAMS #2 (OTC 081-31823)	SAC & FOX	20.0	SWAB CORP
8355586	23453	3504723385		103		T J #2 (OTC #APPLIED FOR)	ELKHORN	0.0	EASON OIL CO
8355585	23454	3504723385		103		T J #2 (OTC #APPLIED FOR)	ELKHORN	0.0	EASON OIL CO
-DAN DARLING OIL				RECEIVED:	09/15/83	JA: OK			
8355706	23592	3505320864		103		LOUIE #1	EAST LAMONT	0.0	FARMLAND INDUSTRI
-DAR-LON OPERATING CO				RECEIVED:	09/15/83	JA: OK			
8355669	23134	3505321027		103		WILLA MAE #1-15	EAST LAMONT	150.0	FARMLAND INDUSTRI
-DAVID E MORGAN				RECEIVED:	09/15/83	JA: OK			
8355690	23406	3507322668		108		COMBS #2	SOONER TREND	1.0	PHILLIPS PETROLEU
-DAVIS OIL COMPANY				RECEIVED:	09/15/83	JA: OK			
8355704	23625	3501722473		103		O U #2	FT REND	0.0	PHILLIPS PETROLEU
-DAWN ENERGY CO				RECEIVED:	09/15/83	JA: OK			
8355562	23423	3504521106		103		HARRISON #1-20	EAST LUTHER HILL	314.0	
-DEMCO OIL & GAS COMPANY				RECEIVED:	09/15/83	JA: OK			
8355658	23494	3507121157		108		FENDER #1	UNNAMED	14.3	CITIES SERVICE CO
8355657	23493	3507121683		108		PATTEN #1		11.0	CITIES SERVICE CO
-DLB ENERGY CORP				RECEIVED:	09/15/83	JA: OK			
8355661	19334	3507323585		102-4	103	GILMORE #2-3	SOONER TREND	100.0	PHILLIPS PETROLEU
-DONALD C SLAWSON				RECEIVED:	09/15/83	JA: OK			
8355647	21191	3501722252		102-4		HUBBARD #2-8	N CALUMET	400.0	PHILLIPS PETROLEU
-ECC OIL CO				RECEIVED:	09/15/83	JA: OK			
8355627	23484	3510523917		103		ALTER #2 SW SW NE S10-T28N-R15E	LENAPAH	16.0	OKAN GAS CO
-F C D OIL CORP				RECEIVED:	09/15/83	JA: OK			
8355703	23629	3505321078		103		MCGIVNEY #1	E LAMONT	383.3	FARMLAND INDUSTRI
-FALCON PETROLEUM COMPANY				RECEIVED:	09/15/83	JA: OK			
8355570	23678	3513921275		103		ANDERSON #1	NORTHWEST DOMBEY	98.0	PANHANDLE EASTERN
-GENIE OIL & GAS CORP				RECEIVED:	09/15/83	JA: OK			
8355650	23100	3508320826		103		KETCH #4	EAST HULL	15.4	EASON OIL CO
-GEORGE RODMAN INC				RECEIVED:	09/15/83	JA: OK			
8355696	20082	3504921870		102-4		NOBLE 1-31	GOLDEN TREND	425.9	WARREN PETROLEUM
-GETTY OIL COMPANY				RECEIVED:	09/15/83	JA: OK			
8355617	23263	3513700000		108		ED KILLINGSWORTH #2	SHO-VEL-TUM	6.0	OKLAHOMA NATURAL
8355616	23277	3513700000		108		J J MCCLANAHAN #24	SHO-VEL-TUM	7.0	OKLAHOMA NATURAL
8355631	23391	3513921661		103		JOHN REITAN #1	N E GUYMON	15.0	NORTHWEST CENTRAL
-GULF OIL CORPORATION				RECEIVED:	09/15/83	JA: OK			
8355588	23450	3507323690		103		HILL /D/ #5-15	LACEY SW (HUNTON MISS	24.0	ARKANSAS LOUISIAN
8355648	21623	3513797052		102-4		MAMIE #1-36	MARLOW	8.0	ARKANSAS LOUISIAN
-GULFSTREAM PETROLEUM CORP				RECEIVED:	09/15/83	JA: OK			
8355589	23443	3509322151		103		LEO G STRECKER #1-13	SW CHEYENNE PROSPECT	26.0	PHILLIPS PETROLEU
-HADSON PETROLEUM CORP				RECEIVED:	09/15/83	JA: OK			
8355683	23525	3505121379		103		ELDRED #1-33	WILDCAT	365.0	ARKANSAS LOUISIAN
-HAINES OIL CO				RECEIVED:	09/15/83	JA: OK			
8355718	22815	3503120614		108		SCHOOL LAND #2	E LAWTON	2.0	MANN INDUSTRIES I
8355719	22816	3503120616		108		SCHOOL LAND #3	E LAWTON	2.0	MANN INDUSTRIES I
8355720	22817	3503120615		108		SCHOOL LAND #4	E LAWTON	2.0	MANN INDUSTRIES I
-HARPER OIL COMPANY				RECEIVED:	09/15/83	JA: OK			
8355716	23081	3504321599		103		INITA #1		146.0	PHILLIPS PETROLEU
8355652	23448	3507300000		108		MINNIE VADDER #1	S E LACEY	36.0	PHILLIPS PETROLEU
-HAZELWOOD PRODUCTION & EXPL CO				RECEIVED:	09/15/83	JA: OK			
8355573	23669	3501722435		103		YOUNG #1-2	SOUTH REEDING	91.3	PHILLIPS PETROLEU
-HILL TOP INVESTMENTS INC				RECEIVED:	09/15/83	JA: OK			
8355600	20843	3506320924		103		MCDONALD #1	HILL TOP	28.2	HILL TOP INVESTME
-HOLD OIL CORP				RECEIVED:	09/15/83	JA: OK			
8355679	23310	3512120721		103		HOLD OIL CORP VOILS #1-30	NORTH CANADIAN	50.0	ARKANSAS LOUISIAN
-HUNTON OIL & GAS CORP				RECEIVED:	09/15/83	JA: OK			
8355610	23558	3504900000		103		GERTIE HOLT #1	ANTIOCH	0.0	WARREN PETROLEUM
-IRA E MONGEY				RECEIVED:	09/15/83	JA: OK			
8355667	21021	3503724251		102-2		RUBY #1 35 037 24251	GLENPOOL	18.0	PHILLIPS PETROLEU
8355666	21020	3503724269		102-2		RUBY #2 35 037 24269	GLENPOOL	18.0	PHILLIPS PETROLEU
8355665	21019	3503724291		102-2		RUBY #3 35 037 24291	GLENPOOL	18.0	PHILLIPS PETROLEU
-J M HUBER CORPORATION				RECEIVED:	09/15/83	JA: OK			
8355723	20484	3500722204		102-4	103	WALLACE "B" #1	LIGHT	350.0	PANHANDLE EASTERN
-JAY PETROLEUM INC				RECEIVED:	09/15/83	JA: OK			
8355563	23535	3508320849		103		PIERSON #1	WEST CRESCENT	5.0	EASON OIL CO
-JEFFERSON-WILLIAMS ENERGY CORP				RECEIVED:	09/15/83	JA: OK			
8355659	23555	3510321864		103		HAZEL VANBEBBER #1-8	LONE ELM SOUTH	144.0	AMINOIL USA INC
-JEFFREY OIL CO				RECEIVED:	09/15/83	JA: OK			
8355727	23016	3511123790		103		HENRY #1	BALDHILL	72.0	PHILLIPS PETROLEU
-JOE C RICHARDSON JR				RECEIVED:	09/15/83	JA: OK			
8355676	24021	3500722215		103		IVANHOE #1	IVANHOE	547.0	PHILLIPS PETROLEU
-JOHN P DOWNEY INC				RECEIVED:	09/15/83	JA: OK			
8355597	21015	3508300000		102-2		VIOLA PAYNE #1		120.0	BUCKEYE NATURAL G
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	09/15/83	JA: OK			
8355697	21932	3505121367		102-4	103	CASSEL #1-17	W VERDEN	803.0	TRANSOK PIPELINE
8355642	19459	3501700000		103		LEFTHAND #1	S E WATONGA	365.0	OKLAHOMA GAS & EL
8355724	23219	3504700000		108-ER		RAGOSS #1	E SPRING VALLEY	20.2	GRACE PETROLEUM C
8355725	23221	3504700000		108-ER		RAGOSS #2	E SPRING VALLEY	20.2	GRACE PETROLEUM C
-KENNEDY & MITCHELL INC				RECEIVED:	09/15/83	JA: OK			
8355603	04231	3505900000		102-4		ANNIS #10-105		360.0	MICHIGAN WISCONSI
-KENNETH L TIPPS				RECEIVED:	09/15/83	JA: OK			
8355628	02324	3510321909		103		KUKUK 4-24	GANSEL	70.0	ARCO OIL & GAS CO
-L R FRENCH JR				RECEIVED:	09/15/83	JA: OK			
8355705	23602	3509322625		103		VICTOR #1	CHEYENNE VALLEY	310.0	DELHI GAS PIPELIN
-M M RESOURCES INC				RECEIVED:	09/15/83	JA: OK			
8355575	23663	3508121196		103		DAVID #1		438.0	KERR-MCGEE CORP
8355574	23664	3508921873		103		LYNN #1		54.6	KERR-MCGEE CORP
-MOBIL OIL CORP				RECEIVED:	09/15/83	JA: OK			
8355663	20403	3513921654		103		BARTLES (UNIT 56) WELL #3	GUYMON-HUGOTON CHASE	100.0	NORTHWEST CENTRAL
8355645	20404	3513921658		103		EBERSOLE (RNG 929) FARM WELL #2	GUYMON-HUGOTON-CHASE	100.0	NORTHWEST CENTRAL
8355646	20408	3513921657		103		R A PARKER (RNG 111) UNIT WELL #3	GUYMON-HUGOTON CHASE	0.0	NORTHWEST CENTRAL
-MR CJ OIL CO				RECEIVED:	09/15/83	JA: OK			
8355583	23408	3511920794		103		SILKWOOD #1		0.0	GAS TRANSMITTING
-OIL LIFT INC				RECEIVED:	09/15/83	JA: OK			
8355569	25249	3510525790		108		HILL #1-29	SOUTH COFFEYVILLE	2.2	PELICAN PIPELINE
8355567	25251	3510526283		108		HUSTON #3 (API 105262831)	SOUTH COFFEYVILLE	2.9	PELICAN PIPELINE
8355566	25252	3510524313		108		DESTMAN #8 (API 105243131)	SOUTH COFFEYVILLE	16.0	PELICAN PIPELINE
8355568	25250	3510526271		108		WILKINS #2 (API 105262711)	SOUTH COFFEYVILLE	10.9	PELICAN PIPELINE
-OLD DOMINION OIL CORP				RECEIVED:	09/15/83	JA: OK			
8355619	21316	3515321371		102-2		HINES #1-29		500.0	WESTERN FARMERS E
-PATTERSON ENTERPRISES INC				RECEIVED:	09/15/83	JA: OK			
8355689	23055	3512322272		103		TAYLOR #1	BYNG	30.0	
-PAUL WALKER				RECEIVED:	09/15/83	JA: OK			
8355662	20121	3503320680		102-2		HOOKER #1	HULIN	365.0	ARKANSAS-LOUISIAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8355668	21740	3503121066		102-2	103	HOSKINS #2	HULEN	146.0	NATURAL GAS OPERA
-PETRO INVESTMENTS INC				RECEIVED:	09/15/83	JA: OK			
8355660	11525	3510700000		108		MULLIE MICCO #3	LYONS-QUINN	1.4	PHILLIPS PETROLEU
-PETROLEUM RESERVE CORP				RECEIVED:	09/15/83	JA: OK			
8355577	23652	3502720740		103		MILLS 8-1		125.0	SUN EXPLORATION &
-PETROMARK EXPLORATION INC				RECEIVED:	09/15/83	JA: OK			
8355630	23366	3507323702		103		HOPKINS 10-2	SOONER TREND	75.0	CONOCO INC
-PLAINS RESOURCES INC				RECEIVED:	09/15/83	JA: OK			
8355684	23566	3509322667		103		BOEHS #36-11		0.0	PHILLIPS PETROLEU
-POGO PRODUCING COMPANY				RECEIVED:	09/15/83	JA: OK			
8355564	25358	3500920493		107-DP		MYRTLE CAMPBELL #1-21	BERLIN	320.0	
-PRYOR CURTIS				RECEIVED:	09/15/83	JA: OK			
8355606	21794	3503120869		102-2		GLENDA COKER #1	E HULLEN	183.0	NATURAL GAS OPERA
8355607	21795	3503121082		102-2		LLOYD COKER #4	E HULLEN	73.0	NATURAL GAS OPERA
-PSEC INC				RECEIVED:	09/15/83	JA: OK			
8355644	19556	3508121500		102-4		BRYAN-BOLIN #1-25		0.0	EL PASO NATURAL G
8355643	19554	3508121521		102-4		EXXON #1-36		0.0	EL PASO NATURAL G
8355621	21565	3508121752		102-4		RACKLEY #1-35		0.0	EL PASO NATURAL G
8355601	19553	3508121540		102-4		SITTON #1-23		0.0	EL PASO NATURAL G
8355698	21566	3508121786		102-4		STANBERRY #1-31		0.0	EL PASO NATURAL G
8355699	21567	3508121790		102-4		VAN GUNDY #1-36		0.0	EL PASO NATURAL G
-RED EAGLE OIL CO				RECEIVED:	09/15/83	JA: OK			
8355686	21696	3500320780		102-2		BUTLER #2	EAST LODER	15.0	RAW ENERGY INC
-RED RIVER OIL & GAS CO				RECEIVED:	09/15/83	JA: OK			
8355687	21833	3501521354		103		SAVAGE #3 - 01501989-1	CEMENT	11.0	MOBIL OIL CORP
-RENEGADE LAND & MINERAL CO INC				RECEIVED:	09/15/83	JA: OK			
8355672	21014	3514322279		102-2		MILLER-A #1	BIRDCREEK	0.0	PHILLIPS PETROLEU
-RICKS EXPLORATION CO				RECEIVED:	09/15/83	JA: OK			
8355620	21497	3514920267		102-2		SHIELDS #11-A		571.0	NATURAL GAS PIPEL
-ROY LAWRENCE DRILLING CO INC				RECEIVED:	09/15/83	JA: OK			
8355728	23065	3511700000		103		RYAN-OSBORN #2	SKINNER SAND	55.0	PHILLIPS PETROLEU
-SAMEDAN OIL CORPORATION				RECEIVED:	09/15/83	JA: OK			
8355598	21009	3501722145		102-2		TRUST #1-23		722.0	DELHI GAS PIPELIN
-SAMSON RESOURCES COMPANY				RECEIVED:	09/15/83	JA: OK			
8355602	17758	3504300000		102-2	103	WALKER #2-36	ALEDO	0.0	PANHANDLE EASTERN
-SANDSTONE RESOURCES INC				RECEIVED:	09/15/83	JA: OK			
8355707	23582	3508322206		103		WEBB #1	SOUTH ORLANDO	25.0	EASON OIL CO
-SANTA FE-ANDOVER OIL CO				RECEIVED:	09/15/83	JA: OK			
8355673	23574	3501121821		103		BOSTON #30-2		120.0	OKLAHOMA GAS PIPE
8355674	23575	3501121829		103		KEPHART #18-2		180.0	OKLAHOMA GAS PIPE
-SCANDRILL INC				RECEIVED:	09/15/83	JA: OK			
8355717	22317	3508700000		103		CHEEK #1		0.0	SUN EXPLORATION &
8355715	22316	3508720792		103		FLOYD CLIFTON #1		0.0	SUN EXPLORATION &
8355710	22311	3508720785		103		HERRELL #1		0.0	SUN EXPLORATION &
8355711	22312	3508720788		103		LITTLE #1		0.0	SUN EXPLORATION &
8355712	22313	3512920728		103		NIX #1		0.0	
8355713	22314	3508720792		103		URSHEL #1		0.0	SUN EXPLORATION &
8355714	22315	3508720810		103		VIDA CLIFTON #1		0.0	SUN EXPLORATION &
-SCC DEVELOPMENT CO INC				RECEIVED:	09/15/83	JA: OK			
8355625	23090	3511124248		103		SEAN #1	BALD HILL	0.0	PHILLIPS PETROLEU
-SENECA OIL COMPANY				RECEIVED:	09/15/83	JA: OK			
8355638	23537	3501121788		103		MEIER #1-25		47.5	
-SOUTHLAND ROYALTY CO				RECEIVED:	09/15/83	JA: OK			
8355653	23455	3515121083		108		RORING #2-29	FREEDOM 76	10.0	PANHANDLE EASTERN
-STANTON ENERGY INC				RECEIVED:	09/15/83	JA: OK			
8355578	23649	3503724651		103		EVANS #1		200.0	KERR-MCGEE CORP
-STEVE JERNIGAN INC				RECEIVED:	09/15/83	JA: OK			
8355709	21978	3504520942		102-2		KELLN #2		0.0	PHILLIPS PETROLEU
-SUN EXPL. & PROD. CO. - HOUSTON				RECEIVED:	09/15/83	JA: OK			
8355694	7887	3515321049		102-4		HILDA NIEMEIER #1	S E TANGIER	250.0	PANHANDLE EASTERN
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	09/15/83	JA: OK			
8355590	23440	3507323084		103		BORELLI "A" #2	DOVER SE	24.0	EXXON CORP
8355595	21987	3507100000		108		EAST BLACKWELL UNIT #3-2	N W GARRETT	6.0	CITIES SERVICE CO
-TARGA OIL & GAS INC				RECEIVED:	09/15/83	JA: OK			
8355664	23220	3508121903		103		WILSON 1-32	DAVENPORT	90.0	NATURAL GAS ENTER
-TENNECO OIL COMPANY				RECEIVED:	09/15/83	JA: OK			
8355701	23595	3504350092		108		A L SPANGLER UNIT #1	PUTNAM	12.0	WESTERN FARMERS E
8355609	23593	3512500000		108		NORA MYERS #1	MORVIN WEST	18.0	ARCO OIL & GAS CO
8355608	23594	3512500000		108		PETE MULIN #1	MORVIN WEST	9.0	ARCO OIL & GAS CO
8355675	23671	3512500000		108		WELLS #2	MORVIN WEST	18.0	ARCO OIL & GAS CO
-TEX-OK PETROLEUM INC				RECEIVED:	09/15/83	JA: OK			
8355695	19829	3500721731		102-4		HENNIGH #1	MOCANE-LAVERNE	400.0	EL PASO NATURAL G
-TEXCO PETROLEUM INC				RECEIVED:	09/15/83	JA: OK			
8355615	23346	3511124307		103		CROWELL #1 SAME AS TEXCO AMEGA/CROW	HECTORVILLE	42.2	PHILLIPS PETROLEU
8355614	23347	3511123895		103		JIM CROWELL #2	HECTORVILLE	78.3	PHILLIPS PETROLEU
-THE WIL-MC OIL CORP				RECEIVED:	09/15/83	JA: OK			
8355681	23401	3505320749		103		CONRADY #1	EAST WAKITA	2.6	SUN EXPLORATION &
8355681	23432	3505320985		103		CONRADY #2	EAST WAKIT	2.8	SUN EXPLORATION &
8355682	23414	3505320839		103		LEBEDA #1		3.2	SUN GAS CO
-THOMAS N BERRY & CO				RECEIVED:	09/15/83	JA: OK			
8355641	23570	3511922173		103		BERRY FEE #9	SOUTH MEHAN	35.0	NORTHWEST CENTRAL
-TOWNER PETROLEUM CO				RECEIVED:	09/15/83	JA: OK			
8355726	23223	3501722290		103		JIM HARMAN #19-1		0.0	PHILLIPS PETROLEU
-TRIGG DRILLING COMPANY INC				RECEIVED:	09/15/83	JA: OK			
8355565	25353	3500920364		107-DP		PAUL KING		0.0	EL PASO NATURAL G
-TXO PRODUCTION CORP				RECEIVED:	09/15/83	JA: OK			
8355670	20941	3512120706		102-4		CRABTREE "A" #1	HARTSHORNE	876.0	DELHI GAS PIPE LI
8355678	20938	3512120446		102-4		HARRINGTON #1	S BREWER	0.0	DELHI GAS PIPE LI
8355604	20654	3503920504		102-2		MEEK B #1	WILDCAT	65.0	DELHI GAS PIPELIN
8355593	21813	3512920847		102-2		MERRICK "C" #1	N STRONG CITY	0.0	DELHI GAS PIPELIN
8355677	20937	3512120577		102-4		ROMINE #1	S BREWER	650.0	DELHI GAS PIPE LI
8355671	20942	3512120660		102-4		TURNEY "A" #1	S BREWER	640.0	DELHI GAS PIPELIN
-UNIT DRILLING & EXPLORATION CO				RECEIVED:	09/15/83	JA: OK			
8355592	23438	3504321611		103		BRANNUM #1	SQUIRREL CREEK	25.0	HYDROCARBON SERVI
8355591	23439	3504321643		103		BRANNUM #2	SQUIRREL CREEK	50.0	HYDROCARBON SERVI
8355580	23437	3504321657		103		CUNNINGHAM #2	SQUIRREL CREEK	150.0	HYDROCARBON SERVI
-VAUGHN GOOD OIL CO				RECEIVED:	09/15/83	JA: OK			
8355708	23552	3508100000		103		ASHLEY #1		23.0	
8355640	23550	3505300000		103		FOTHERGILL 1-9		18.0	
-VIERSEN & COCHRAN				RECEIVED:	09/15/83	JA: OK			
8355693	25141	3509322711		103		MORAWSKI #2-4	N W OKEENE	135.0	PHILLIPS PETROLEU
-VULCAN ENERGY CORP				RECEIVED:	09/15/83	JA: OK			
8355721	22950	3507321957		103		UHLENHAKE #1	SOONER TREND	321.2	PHILLIPS PETROLEU
8355680	23314	3507321957		103		UHLENHAKE #1	SOONER TREND	100.0	PHILLIPS PETROLEU

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-VULCAN OIL & GAS CORP				RECEIVED:	09/15/83	JA: OK			
8355626	23360	3511121905		103		BUDDY HURST #2	TIGER FLAT	1.0	PHILLIPS PETROLEU
-WARD PETROLEUM CORP				RECEIVED:	09/15/83	JA: OK			
8355688	22831	3505121368		103		ALLEN #1	S W NORGE	1400.0	PHILLIPS PETROLEU
-WESTWIND PRODUCTION CO INC				RECEIVED:	09/15/83	JA: OK			
8355579	23646	3512300000		103		SURGNIER #1	EAST FRANCIS	0.0	CONTINENTAL GAS S
-WHITMAR EXPLORATION CO				RECEIVED:	09/15/83	JA: OK			
8355692	23421	3508720714		103		FLEET #1-27	NORTHEAST CRINER	0.0	SUN EXPLORATION &
8355629	23315	3507920479		103		GIST #1-20	REDLAND	0.0	ARKANSAS LOUISIAN
-WOODS PETROLEUM CORPORATION				RECEIVED:	09/15/83	JA: OK			
8355605	21391	3503920760		102-2		DONLEY #30-1	SWIFT WOMAN	292.0	TRANSOK PIPE LINE
8355624	21857	3503920661		102-2		MEACHAM #17-1	NW CLINTON	438.0	TRANSOK PIPE LINE
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PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES									
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-ALCOVE INVESTMENTS				RECEIVED:	09/16/83	JA: PA			
8355768	20933	3700520885		107-PE		RUTH L KIMMEL #1	DUTCH RUN	14.0	PEOPLES NATURAL G
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	09/16/83	JA: PA			
8355785	20954	3706521509		108		ROBERT V MAINE #2 WN-1527	GASKILL	16.0	GENERAL SYSTEM PU
-DORAN & ASSOCIATES INC				RECEIVED:	09/16/83	JA: PA			
8355782	20949	3706324154		103		A K GOOD #1 KL-48	UPPER DEVONIAN SANDS	20.0	APOLLO GAS CO
8355778	20944	3706324155		103		A K GOOD #2 KL-50	UPPER DEVONIAN SANDS	20.0	APOLLO GAS CO
8355784	20952	3706324037		103		CARL REARIC #2 KL-44	UPPER DEVONIAN SANDS	20.0	PEOPLES NATURAL G
8355772	20937	3706324909		108		CHARLES BUTERBAUGH #1 KA-24	UPPER DEVONIAN SANDS	20.0	COLUMBIA GAS TRAN
8355776	20941	3706325028		108		CLAIRE GROMLEY #1 KA-33	UPPER DEVONIAN SANDS	20.0	COLUMBIA GAS TRAN
8355777	20943	3706321824		103		EBERT BONACCI #1 KL-72	UPPER DEVONIAN SANDS	20.0	T W PHILLIPS GAS
8355783	20950	3706324045		103		HAMILTON #1 KL-46	UPPER DEVONIAN SANDS	20.0	PEOPLES NATURAL G
8355771	20936	3706325750		108		HELEN STOUT #4 KA-62	UPPER DEVONIAN SANDS	20.0	CONSOLIDATED GAS
8355769	20934	3706326152		108		JOHN GERRY #1 KA-67	UPPER DEVONIAN SANDS	20.0	COLUMBIA GAS TRAN
8355775	20940	3706324230		108		LOY GROMLEY #1 KA-11	UPPER DEVONIAN SANDS	20.0	CONSOLIDATED GAS
8355774	20939	3706326584		108		MILDRED GOSS #1 KA-102	UPPER DEVONIAN SANDS	20.0	COLUMBIA GAS TRAN
8355781	20948	3706323950		103		MORRIS ANDERSON #2 KL-17	UPPER DEVONIAN SANDS	20.0	PEOPLES NATURAL G
8355770	20935	3706325808		108		ROBERT F HENRY #2 KA-65	UPPER DEVONIAN SANDS	20.0	COLUMBIA GAS TRAN
8355780	20947	3700522084		103		ROY SCHALL #1 KL-22	UPPER DEVONIAN SANDS	20.0	INDUSTRIAL GAS SA
8355779	20946	3706324019		103		T L EDWARDS #2 KL-26	UPPER DEVONIAN SANDS	20.0	PEOPLES NATURAL G
8355773	20938	3706326594		108		THOMPSON CEMETERY CO #1 KA-103	UPPER DEVONIAN SANDS	20.0	COLUMBIA GAS TRAN
-HAMILTON-RICHARDS				RECEIVED:	09/16/83	JA: PA			
8355742	20866	3712900000		108		ELIZABETH GARRIGAN #1	BLAIRSVILLE	3.2	PEOPLES NATURAL G
8355740	20864	3712920344		108		FRANK LITVIK #1	BLAIRSVILLE	3.6	PEOPLES NATURAL G
8355741	20865	3712900000		108		FRANK LITVIK #2	BLAIRSVILLE	3.0	PEOPLES NATURAL G
8355743	20867	3712900000		108		JOSEPH M KAHL #1	BLAIRSVILLE	4.2	PEOPLES NATURAL G
-J & J ENTERPRISES INC				RECEIVED:	09/16/83	JA: PA			
8355729	18544	3706521376		108		R & P COAL CO #13	MCCALMONT	1.8	CONSOLIDATED GAS
-MONROE RESOURCES LTD				RECEIVED:	09/16/83	JA: PA			
8355735	20648	3712332714		107-TF		L PRICE #1	COLUMBUS	20.0	COLUMBIA GAS TRAN
8355734	20647	3712332714		102-2		L PRICE #1	COLUMBUS	20.0	COLUMBIA GAS TRAN
8355733	20646	3712332713		107-TF		R SCOTT #1	COLUMBUS	20.0	COLUMBIA GAS TRAN
8355732	20645	3712332713		102-2		R SCOTT #1	COLUMBUS	20.0	COLUMBIA GAS TRAN
-NRM PETROLEUM CORPORATION				RECEIVED:	09/16/83	JA: PA			
8355766	20892	3704922277		102-2		KANIA #1	NORTHEAST	0.0	COLUMBIA GAS TRAN
8355765	20891	3704922277		107-TF		KANIA #1	NORTHEAST	0.0	COLUMBIA GAS TRAN
8355764	20888	3704922611		102-2		SEXTON #1	NORTHEAST	0.0	COLUMBIA GAS TRAN
8355763	20887	3704922611		107-TF		SEXTON #1	NORTHEAST	0.0	COLUMBIA GAS TRAN
-S T JOINT VENTURE 82-D				RECEIVED:	09/16/83	JA: PA			
8355738	20769	3706522743		103		HILLIS #2	WINSLOW	25.0	NATIONAL FUEL GAS
-S T JOINT VENTURE 82E				RECEIVED:	09/16/83	JA: PA			
8355739	20770	3706522770		103		SHIELDS #1	PUNXSUTAWNEY	25.0	T W PHILLIPS GAS
-SCHALL VICTOR E				RECEIVED:	09/16/83	JA: PA			
8355767	20932	3700500000		108		SHEARER WELL #1	SOUTHBEND	0.0	PEOPLES NATURAL G
-TURM OIL INC				RECEIVED:	09/16/83	JA: PA			
8355731	20498	3700522826		103		EVA M & T LOWELL DEAN #1	BRYAN	48.0	T W PHILLIPS GAS
8355730	20497	3700522814		103		HARLAND J & ELIZABETH R LYTLE #1	DAYTON	50.0	PEOPLES NATURAL G
8355737	20712	3700522838		103		IVAN F YARGER #1	DAYTON	55.0	PEOPLES NATURAL G
8355736	20710	3700522839		103		LEROY SHROCK #1	DAYTON	60.0	PEOPLES NATURAL G
-VIKING RESOURCES CORP				RECEIVED:	09/16/83	JA: PA			
8355747	20871	3712329525		108		SHEFFIELD PARTNERSHIP 361-4	SHEFFIELD	5.0	NATIONAL FUEL GAS
8355746	20870	3712329526		108		SHEFFIELD PARTNERSHIP 361-5	SHEFFIELD	5.0	NATIONAL FUEL GAS
8355745	20869	3712329527		108		SHEFFIELD PARTNERSHIP 361-6	SHEFFIELD	5.0	NATIONAL FUEL GAS
8355758	20882	3712328134		108		SHEFFIELD PARTNERSHIP 363-2	SHEFFIELD	2.0	NATIONAL FUEL GAS
8355757	20881	3712328135		108		SHEFFIELD PARTNERSHIP 363-3	SHEFFIELD	2.0	NATIONAL FUEL GAS
8355756	20880	3712328136		108		SHEFFIELD PARTNERSHIP 363-4	SHEFFIELD	2.0	NATIONAL FUEL GAS
8355744	20868	3712329528		108		SHEFFIELD PARTNERSHIP 363-5	SHEFFIELD	2.0	NATIONAL FUEL GAS
8355751	20875	3712327298		108		SHEFFIELD PARTNERSHIP 364-10	SHEFFIELD	1.0	NATIONAL FUEL GAS
8355752	20876	3712300000		108		SHEFFIELD PARTNERSHIP 364-12	SHEFFIELD	1.0	NATIONAL FUEL GAS
8355755	20879	3712327293		108		SHEFFIELD PARTNERSHIP 364-13	SHEFFIELD	1.0	NATIONAL FUEL GAS
8355760	20884	3712328138		108		SHEFFIELD PARTNERSHIP 364-14	SHEFFIELD	1.0	NATIONAL FUEL GAS
8355759	20883	3712328137		108		SHEFFIELD PARTNERSHIP 364-15	SHEFFIELD	1.0	NATIONAL FUEL GAS
8355748	20872	3712327287		108		SHEFFIELD PARTNERSHIP 364-6	SHEFFIELD	1.0	NATIONAL FUEL GAS
8355749	20873	3712327288		108		SHEFFIELD PARTNERSHIP 364-7	SHEFFIELD	1.0	NATIONAL FUEL GAS
8355750	20874	3712327289		108		SHEFFIELD PARTNERSHIP 364-8	SHEFFIELD	1.0	NATIONAL FUEL GAS
8355753	20877	3712327284		108		SHEFFIELD PARTNERSHIP 365-1	SHEFFIELD	0.0	NATIONAL FUEL GAS
8355761	20885	3712327285		108		SHEFFIELD PARTNERSHIP 365-2	SHEFFIELD	0.0	NATIONAL FUEL GAS
8355754	20878	3712327286		108		SHEFFIELD PARTNERSHIP 365-3	SHEFFIELD	0.0	NATIONAL FUEL GAS
8355762	20886	3712329529		108		SHEFFIELD PARTNERSHIP 402-2	SHEFFIELD	0.0	NATIONAL FUEL GAS

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Part VI

Department of Labor

Occupational Safety and Health Administration

Occupational Exposure to Ethylene Dibromide; Notice of Proposed Rulemaking

DEPARTMENT OF LABOR

29 CFR Part 1910

[Docket No. H-111]

Occupational Exposure to Ethylene Dibromide

AGENCY: Occupational Safety and Health Administration [OSHA], Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: By this notice, the Occupational Safety and Health Administration, [OSHA] is proposing to revise the present occupational health standard regulating employee exposure to ethylene dibromide [EDB], 29 CFR 1910.1000, Table Z-2.

The proposed standard mandates a reduction in the premissiable exposure limit from 20 parts per million parts of air to 0.1 parts per million, restricts dermal exposure and sets requirements for exposure nonitoring, methods of control, personal protective equipment, hygiene practices, medical surveillance and employee training and education.

The proposed revision is based on OSHA's determination that the present premissible exposure limit (PEL) for EBD of 20 parts per million (ppm) as an 8-hour time weighted average (TWA) exposure does not provide adequate protection against cancer and other adverse health effects.

DATES: Written comments on these rules must be postmarked by November 21, 1983. Objections and requests for a hearing must be postmarked by November 21, 1983.

ADDRESSES: All comments, objections and hearing requests should be sent to the Docket Officer, Docket H-111, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Room S-6212, Washington, D.C. 20210; (202) 523-7894.

Written comments received will be available for inspection and copying in the Docket Office, Rm S-6212 at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Office of Public Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W. Room N3718., Washington, D.C. 20210; (202) 523-8151.

SUPPLEMENTARY INFORMATION: As an aid to the reader, the following is an outline of the contents of this **Federal Register** Notice.

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I. Pertinent Legal Authority

Authority for issuance of this standard is found primarily in sections 6(b), 8(c), and 8(g)(2) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655(b), 657(c), and 657(g)(2). Section 6(b)(5) governs the issuance of occupational safety and health standards dealing with toxic materials or harmful physical agents. Section 3(8) of the Act, 29 U.S.C. 652(8), defines an occupational safety and health standard as:

> (A) standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide a safe or healthful employment and places of employment.

The Supreme Court has said that section 3(8) applies to all permanent standards promulgated under the Act and requires the Secretary, before issuing any standard, to determine that it is reasonably necessary and appropriate to remedy a significant risk of material health impairment. *Industrial Union Department* v. *American Petroleum Institute*, 448 U.S. 607 (1980).

The "significant risk" determination constitutes a finding that, absent the change in practices mandated by the standard, the workplaces in question would be "unsafe" in the sense that workers would be threatened with a significant risk of harm. *Id.* at 642. This finding is not unlike the threshold finding that a substance is toxic or a physical agent is harmful. *Id.* at 643, n. 48. A significant risk finding, however, does not require mathematical precision or anything approaching scientific certainty if the "best available evidence" does not warrant that degree of proof. *Id.* at 655-656; 29 U.S.C. 655(b)(5). Rather, the Agency may base its finding largely on policy considerations and has considerable leeway with the kinds of assumptions it applies in interpreting the data supporting it. *Id.* The Court's opinion indicates that risk assessments, which may involve mathematical estimates with some inherent uncertainties, are a means of demonstrating the existence of significant risk.

After OSHA has determined that a significant risk exists and that such risk can be reduced or eliminated by the proposed standard, it must set the standard "which most adequately assures, to the extent feasible on the basis of the best available evidence, that no employees will suffer material impairment of health * * *." (Section 6(b)(5) of the Act). The Supreme Court has interpreted this section to mean that OSHA must enact the most protective standard possible to eliminate a significant risk of material health impairment, subject to the constraints of technological and economic feasibility. *American Textile Manufacturers Institute, Inc.* v. *Donovan*, 452 U.S. 490 (1981). The Court held that "cost-benefit analysis is not required by the statute because feasibility analysis is." *Id.* at 509.

Authority to issue this standard is also found in section 8(c) of the Act. In general, this section empowers the Secretary to require employers to make, keep, and preserve records regarding activities related to the Act. In particular, section 8(c)(3) gives the Secretary authority to require employers to "maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6." Provisions of OSHA standards which require the making and maintenance of records of medical examinations, exposure monitoring, and the like are issued pursuant to section 8(c) of the Act.

The Secretary's authority to issue this proposed standard is further supported by the general rulemaking authority granted in section 8(g)(2) of the Act. This section empowers the Secretary "to prescribe such rules and regulations as he may deem necessary to carry out (his) responsibilities under the Act"—in this case as part of or ancillary to, a section 6(b) standard. The Secretary's

responsibilities under the Act are defined largely by its enumerated purposes, which include:

* * * [E]ncouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions [29 U.S.C. 651(b)(1)];

* * * [A]uthorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to business affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act; [29 U.S.C. 651(b)(3)];

* * * [B]uilding upon advances already made through employer and employee initiative for providing safe and healthful working conditions [29 U.S.C. 651(b)(4)];

* * * [P]roviding for the development and promulgation of occupational safety and health standards [29 U.S.C. 651(b)(9)];

* * * [P]roviding for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this [Act] and accurately described the nature of the occupational safety and health problems [29 U.S.C. 651(b)(12)];

* * * [E]xploring ways to discover latent diseases, establishing causal connections between diseases and work in envoronmental conditions * * * [29 U.S.C. 651(b)(6)];

* * * [E]ncouraging joint labor-management efforts to reduce injuries and diseases arising out of employment [29 U.S.C. 651(b)(13)];

* * * [A]nd developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems [29 U.S.C. 651 (b)(5)].

Because the ethylene dibromide standard is reasonably related to these statutory goals, the Secretary finds that this standard is necessary to carry out his responsibilities under the Act. In addition to its status as a section 6(b) standard, it also falls within the broader class of section 8 regulations.

II. General

A. Chemical Identification

Ethylene dibromide (Chemical Abstract Services Registry Number 106-93-4) is a colorless, non-flammable liquid at room temperature with a distinctive, mildly sweet odor detectable in air at levels ranging from 10-25 parts per million. It turns brown on exposure to light and reacts as an alkylating agent, liberating bromine. Synonyms for ethylene dibromide include EDB, 1,2-dibromoethane, ethylene bromide, sym-dibromoethane and glycol bromide. It has a chemcial formula of $Br\text{-}CH_2\text{-}CH_2\text{-}Br$, with a molecular weight of 187.9.

B. Production and Use

Ethylene dibromide (EDB) is a clear and colorless liquid that has a number of applications. EDB is produced commercially by reacting gaseous ethylene with liquid bromine. Its primary use is as a scavenger in leaded gasoline to prevent the buildup of lead oxides from tetraethyl lead in automobile engines. EDB is also used as a pesticide, as an intermediate in the synthesis of dyes and pharmaceuticals, and as a solvent for resins, gums, and waxes. Most potentially significant exposures to EDB occur in the industries or industry sectors where it is manufactured, used in the manufacturing and blending of antiknock compounds, formulated for use as a pesticide, or used as a fumigant on citrus (primarily California, Florida, and Texas), grain and papayas. EDB is also used in the fumigation of flour milling equipment. Some EDB is used in the fumigation of mangoes, etc. [See Preliminary Regulatory Impact Assessment].

The four firms that currently produce EDB in the United States are PPG Industries (PPG) [1] Ethyl Corporation (Ethyl), Great Lakes Chemicals Corporation (GLCC), and the Dow Chemical Corporation (Dow). As a result of the declining use of leaded gasoline, it is probable that one or two firms will cease production of EDB by 1990.

The available information indicates that a total of 90 production workers at all four plants are exposed to EDB on daily basis continuously, and that up to 400 industrial production workers are exposed to EDB on a periodic basis in manufacturing. These employees also include maintenance personnel providing maintenance services for plant operations as well as other personnel who occasionally may be exposed for short periods of time, but not on a daily basis.

Employees in the EDB manufacturing industry generally perform one of five different functions. At the Ethyl Corporation, the functions are divided into four job categories which include a crew leader, a control room operator, a loader, and surveillance technician. The crew leader is responsible for the manufacturing and oversees the production of EDB, vinyl bromide, bromine, and sulfur.

EDB is used in the manufacturing of antiknock additives for gasoline. These additives vary in composition with more than 100 different blends being produced (Ex. 7-2 p.7). A typical gasoline blend, however, contains ethylene dibromide (17.86 percent), ethylene dichloride (18.81 percent), and various tetralkyl (methyl and ethyl) leads in a ratio of about 1:1:3. Aviation antiknock mixes contain 35.68 percent weight EDB and no EDC. In addition, some blends may contain benzene and toluene. The plending process does not involve the chemical reaction of ethylene dibromide with the other compounds of the mix, but is a physical blending of the constituents.

Employees exposed to EDB in the manufacturing of antiknock compounds and their blending, generally are exposed to EDB in the control room, production loading and peripheral operations. As of January 1, 1982, the following four firms supplied antiknock packages: E. I. Dupont de Nemours and Company Inc., (Dupont), Ethyl Corporation (Ethyl), Nalco Chemical Company (Nalco), and PPG Industries (PPG). At Nalco, for example, some of the jobs where employees may be exposed to EDB include shift superintendent, a blend operator, a material handler, and a laboratory technician. The following are some of the jobs and operations that can result in exposure to EDB:

a. Blend operator—unloading all liquid raw materials, takes quality control samples, blends products and loads tank cars.

b. Material handler—assists the blend operator in all duties.

c. Laboratory technician—conducts quality control tests on raw materials and finished products.

EDB is used with other chemicals in the formulation of pesticides. The consumption of EDB for use in pesticides has increased from about 5 million pounds in 1976 to an estimated 13-15 million pounds in recent years. A total of 18 firms with 20 plants formulate pesticides containing EDB, including three of the four EDB manufacturers identified earlier. These firms either formulate pesticides containing EDB or repackage EDB-containing pesticides that have been blended previously. The EDB pesticide formulation process involves a batch operation in which liquid EDB is blended with other liquid active or inert ingredients and then packaged into containers. In most plants, this is a partially closed system, with completely closed blending operations and open packaging (or filling) operations. In addition to the EDB blending and filling operations described above, plant production workers may be exposed to EDB during maintenance, laboratory sampling and analysis, and warehouse activities.

[1] PPG Industries is no longer manufacturing EDB.

To be more specific EDB is obtained in 30-gallon or 55-gallon drums, in rail cars or tank trucks. It is mixed with other active or inert ingredients and the formulated pesticides are then repackaged. In about 50 percent of all EDB pesticide formulation plants, including both small and large plants, EDB is pumped from the container in which it was received to a blending or mixing tank. Other ingredients are also pumped into the blending tank. The ingredients are sometimes agitated or blended with a mixer, but in most cases, the force of the pumping action blends the ingredients sufficiently. The final product is then packaged into one-gallon or five gallon pails, 30-gallons or 55-gallon drums, cylinder tanks ranging in size from eight pounds to 144 pounds, or tank trucks. There are many opportunities for EDB exposure during formlation. While exposures vary from plant to plant, the following formulation operations frequently result in exposure to EDB:

a. Pumping EDB to storage tanks;

b. Pumping EDB from tanks or drums to blending tanks or drums;

c. Filling EDB pesticide containers (pails and drums);

d. Loading tank trucks;

e. Capping EDB pesticide containers (pails and drums);

f. Maintaining, repairing, cleaning, and/or disposing or drums, tanks, pumps, and equipment;

g. Taking and analyzing quality control samples; and

h. Working in warehouse operations.

The Animal, Plant, and Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) requires citrus and other fruits to be fumigating if the citrus is transported interstate from a regulated area to prevent the spread of the fruit fly.

The handling process for fresh citrus includes packing the citrus, fumigated and hauling the fumigated produce either to nearby export warehouses or to distant warehouses in other citrus-growing regions. The initial operations preceding the packing of the citrus are comparable in Texas and Florida, but packed Florida fruit is loaded into trailer trucks and hauled to central, state-operated fumigation chambers, whereas Texas citrus is fumigated in privately operated chambers at the packinghouse.

Employee exposure to EDB following fumigation is related to the rate at which the adsorbed EDB offgasses from citrus. Offgassing begins immediately following fumigation and will continue for up to 14–21 days. Another source of exposure is the citrus cartons which also adsorb EDB and continue to offgass for appreciable periods following completion of the fumigation cycle.

The proposed standard directly affects truckers who haul fumigated fresh citrus, and longshoremen and warehousemen who are exposed to EDB at the port facilities. In addition the agency has found residual EDB on the surface of citrus after fumigation. This residual may be an additional source of exposure.

Liquid grain fumigants containing EDB are used to prevent insect infestation in stored grain. Unfortunately, little published data are available on the amount of grain fumigated with EDB, on the quantity of EDB formulations used in the facilities using those fumigants, or on the number of worker exposed. Grain storage facilities are either "on-farm" sites or "off-farm" sites. The latter include country elevators, subterminal and terminal elevators, port elevators, and grain stored by flour mills and feed processors.

As explained in the Regulatory Impact Assessment, EDB is a favored fumigant in small grain storage facilities because these small facilities usually are not well sealed. EDB is retained by the grain longer than other carbon tetrachloride based fumigants and the grain in these open facilities can remain uninfested longer.

EDB has been used over 20 years as a "spot fumigant" for the control of insect populations that invade flour milling equipment. Flour and cereal grains tend to collect the many ledges and obstructions within mill machinery and represent the primary areas of insect infestation. EDB is considered an essential ingredient in spot fumigation. When applying EDB "spot fumigants," the flour milling and cereal handling equipment is run until it is as empty as possible, leaving only small quantities of grain trapped in the machinery. The EDB fumigant is then applied with a gun that releases the fumigant into specially designated holes in the grain mill equipment. The facility is then shut down for about 24 hours, after which the equipment is either aired out or placed back in operation without aeration. Using this procedure, worker exposure in the mill is reduced considerably, but is not totally eliminated.

EDB is a fumigant used to control Mediterranean Fruit Flies in and on Papaya leaving Hawaii. Papaya is fumigated in large containers and then is removed from the containers, culled, washed and treated with a fungicide and then is packed in boxes for shipment. Generally, the boxes are loaded into refrigerated shipping containers and transported to California by sea. Five of the seven fumigation sites are located in Hilo, on the Island of Hawaii. The production operations consist of fumigating, packing, and shipping the harvested papaya. Exposure is of course related directly and indirectly to fumigation operations with the frequency and intensity of fumigation directly affecting worker exposure.

Employee exposures to EDB occur during the fumigation process and the resulting offgassing of fruit during sorting/packing, storing and transportation. Many of the same exposure possibilities mentioned in connection with the fumigation of citrus also occur with fumigated papaya.

C. Present Standard

The premissible exposure limit (PEL) for occupational exposure to ethylene dibromide is found in Table Z–2 of 29 CFR 1910.1000. The standard provides that an employee's airborne exposure to ethylene dibromide, in any 8-hour workshift of a 40-hour workweek shall not exceed an 8-hour time weighted average (TWA) limit of 20 parts per million (ppm). Further, an employee's exposure to ethylene dibromide shall not exceed a ceiling concentration of 30 ppm at any time during an 8-hour shift, except for a maximum duration of 5 minutes, when the "acceptable maximum peak" concentration shall not exceed 50 ppm.

The standard provides that administrative or engineering controls must be implemented to reduce exposure to within the PEL whenever feasible. When such controls are not feasible to achieve full compliance, protective equipment or any other protective measure shall be used to keep the exposure of employees to EDB within the limits prescribed.

The current standard for EDB was adopted in 1971 as a national consensus standard, under Section 6(a) of the Occupational Safety and Health Act of 1970. (84 Stat. 1592; 29 U.S.C. 655). The source of the standard was the American National Standards Institute (ANSI Z 37.31–1970). The ANSI exposure limits were intended to protect workers from injury to the lungs, liver, and kidneys which had been observed from excessive acute, or chronic exposures to EDB in humans and experimental animals. The potential for EDB to cause cancer or reproductive damage was not a basis for the establishment of the current permissible exposure limit.

D. Background

On December 14, 1977, EPA issued a notice of Rebuttable Presumption Against Registration and Continued

Registration (RPAR) of pesticide products containing EDB (42 FR 63134), under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). EPA subsequently proposed immediate cancellation of the EDB registration for stored grain and cancellation of the EDB registration for post-harvest fumigation of citrus, tropical fruits and vegetables as of July 1, 1983 (see 45 FR 81516, December 10, 1980). EPA has, thus far, taken no final action on these proposed cancellations.

In 1977, The National Institute for Occupational Safety and Health (NIOSH) recommended that the PEL for EDB be reduced to a ceiling limit of 0.13 ppm [or 130 parts per billion (ppb)] (Ex. 4–4). NIOSH recommended revising the standard and included requirements for environmental monitoring, medical surveillance, labelling, personal protective equipment and clothing, employee training, work practices, sanitation practices, and recordkeeping requirements. This determination was based on several scientific reports which indicated that chronic exposure to EDB may lead to cancer, birth defects, sterility, damage to genetic material, and a number of other systemic effects. Following receipt of the NIOSH recommendations for a revised standard, OSHA published a request for comments and information in the **Federal Register** on March 17, 1978 (43 FR 11227). The request asked for comments on several general and specific issues concerning the NIOSH recommendations for a revised standard for occupational exposure to EDB. OSHA received 34 comments from individuals and companies representing a broad range of interests. These submitted comments remain part of the permanent record for EDB and will be considered in all regulatory decisions.

In addition, EDB has been the subject of three NIOSH Current Intelligence Bulletins. The first, published in 1975, alerted workers, employers and others of the preliminary results of a National Cancer Institute study indicating that EDB is carcinogenic in laboratory rodents (Ex. 4–5). The second, published in 1978, reported that a NIOSH study had found a serious toxic interaction between inhaled ethylene dibromide and ingested disulfiram in laboratory rats and recommended that no worker be exposed to both EDB and disulfiram. (Ex. 4–6) The third, dated October 26, 1981, provides recent information on EDB's potential carcinogenic risk and reaffirms the NIOSH 1977 recommended workplace exposure limit of 0.13 ppm (Ex 4–7).

In 1977, the International Agency for Research on Cancer (IARC)concluded that sufficient evidence exists that EDB is an animal carcinogen and that it probably is a carcinogen to humans based on its evidence as an animal carcinogen. IARC placed EDB is group 2B. In general, the group 2 designation signifies that the chemical, group of chemicals, industrial process or occupational exposure is probably carcinogenic to humans. The letter B added to the numerical designation is meant to indicate inadequate data is available in humans but sufficient evidence is available for animals.

In 1978, the American Conference of Governmental Industrial Hygienists (ACGIH) added ethylene dibromide to its list of industrial substances recognized to have carcinogenic potential for humans. The 1981 ACGIH list of threshold limit values [TLV] assigns no TLV for EDB exposure, but states that "no exposure or contact by any route—respiratory, skin or oral, as detected by the most sensitive methods—shall be permitted" (Ex. 4–8).

The Public Health Services Act amended in 1978 (Section 301(b)(4)) requires the Secretary of the Department of Health and Human Services to publish a list annually of "all substances which are either known to be carcinogens or which may reasonably be anticipated to be carcinogens snd to which a significant number of persons residing in the United States are exposed * * *" In December 1981 the Secretary of Health and Human Services through the department of Public Health Services, made a determination that EDB met this criteria and included this substance in its *Second Annual Report on Carcinogens*. The report was prepared by the National Toxicology Program and its member agencies.

In July 1981, the potential health risks of EDB drew national attention as a result of the State of California, Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) proposing an emergency temporary standards (ETS) for EDB of 130 ppb. (Ex. 4–3) California was concerned that the use of EDB to treat harvested fruit to prevent the spread of the Mediterranean fruit fly world result in an increased number of workers exposed to EDB.

The California Emergency standard became effective September 23, 1981 (Ex. 4–9). California based its decision to issue an ETS on the potential widspread use of EDB as a post-harvest fumigant, the large number of workers who could be exposed and the fact that the present OSHA standard does not take into account recent data concerning the carcinogenicity of EDB. The ETS was adopted as a permanent standard on January 14, 1982, and became effective on March 22, 1982. The final California standard (General Industry) Safety Order 5219 (Ex. 7–8)) for EDB received Federal approval on March 1, 1983 (48 FR 8610). The California standard requires that worker exposure to EDB shall not exceed 130 based on an 8-hour TWA and shall not exceed a 130 ppb ceiling limit based on a 15-minute sample. It also requires reporting of EDB use, emergencies, exposure monitoring, methods of compliance, personal protective equipment, training and recordkeeping.

E. Petitions for an Emergency Temporary Standard

On September 2, 1981, the International Brotherhood of Teamsters (IBT) petitioned OSHA for an emergency temporary standard for EDB which would reduce the PEL to 15 ppb as an 8-hour TWA. (Ex. 4–11) IBT members represent a large number of workers in the fruit industry, where EDB may be used to control infestation by Mediterranean fruit fly. The IBT petition was later joined by the Food and Beverage Trades Department, AFL–CIO, in a letter to OSHA dated October 5, 1981, (Ex. 4–12) and by the American Federation of Labor and Congress of Industrial Organizations [AFL–CIO] in a letter dated October 20, 1981. (Ex. 4–13) The International Longshoremen's and Warehousemen's Union (ILWU) also requested that OSHA issue an emergency temporary standard for EDB. In a letter dated October 16, 1981, the ILWU recommended an exposure limit, both as an 8-hour TWA and a ceiling concentration of 15 ppb (Ex. 4–14). In response to these petitions, OSHA reviewed the available EDB exposure information and recent scientific evidence. After careful consideration, OSHA conclude that although the available information indicated a potential health risk, it did not meet the statutory criteria necessary for issuance of an ETS within the meaning of section 6(c) of the OSH Act. Therefore it was not possible, based on the information then at hand, to establish the feasibility of, or necessity for an ETS.

OSHA acknowledged that the present PEL for EDB may not be sufficiently protective, and therefore decided to proceed with rulemaking under section 6(b) of the Occupational Safety and Health Act of 1970. An advance Notice of Proposed Rulemaking (ANPR) was published on December 18, 1981 (46 FR 1671). The notice asked interested

parties to submit comments on a number of issues which would be critical to the development of a revised standard. OSHA also initiated a series of special industrial hygiene surveys to determine the nature and extent of EDB exposure at agricultural worksites in Texas, Florida and California.

II. Health Effects

A. Acute Toxicity

EDB is a severe skin irritant which can produce blistering. Occupational exposure to EDB in air has been found to produce severe eye irritation, throat irritation, headache, depression and loss of appetite (Clin. Tox. 1979). Nasal irritation is reported from exposures of 50 ppm. Exposures to extremely high levels through inhalation, ingestion or skin contact have been shown to produce systemic damage to several organs, e.g., kidney, pancreas, spleen, heart, liver, adrenal glands and testes. Although extremely high doses produce immediate central nervous system [CNS] depression the onset of other signs and symptoms may be delayed for several hours even at lethal doses. After the signs occur, the onset of respiratory failure and death is very rapid, usually in terms of hours. Chronic exposures to levels above the current OSHA standard of 20 ppm produce acute poisoning which indicate that either the compound or its effects are cumulative.

Eye irritation from EDB has been evaluated in rabbits (Rowe et al. 1952). Acute exposure produced pain and conjunctival irritation which lasted for about 24 hours. There was slight necrosis of the cornea but healing was rapid and complete. Dilute EDB solutions in propylene glycol were more toxic than the pure material, but healing was still complete.

EDB is rapidly absorbed through the skin in toxic amounts (Thomas and Yant 1927). Human studies show severe toxic injury due to direct contact. EDB penetrates protective clothing such as neoprene rubber and plastic gloves (Rowe et al. 1952). Serious injury has resulted when clothing, particularly shoes, which have been contaminated with EDB are worn for short periods of time (hours). The immediate signs occur in the central nervous system and at the site of exposure. In humans who survive the CNS depression, signs of systemic toxicity are delayed for up to 12 to 24 hours. The liver and kidney are major target organs in severe poisoning. Effects in humans at various doses have been reported. For example: (1) Death from oral exposure in the 150 mg/kg range; (2) systemic as well as local signs within 3 to 30 minutes of dermal exposures at 15 mg/kg but no fatalities or permanent sequelae from exposure to this level; and (3) death from inhalation doses of roughly 1000 mg/kg. Recurrent exposures at lower doses induced toxicity in a worker (Kochmann 1928). These reports characterize the toxicity of EDB to humans but they are insufficient to establish a fatal dose for dermal exposure or a no-effect dose for inhalation or oral exposure. The delay in appearance of the most severe systemic toxic effects occurs with all three dosing routes.

It may be concluded that EDB is acutely toxic. In humans doses from 15 to 150 mg/kg, EDB will produce toxic effects and death regardless of the exposure route—dermal, inhalation or oral. Absorption through the skin is rapid, on the order of minutes. The toxicity reported in the acute animal studies is consistent with these conclusions.

B. Carcinogenicity

The potential for EDB to induce cancer in mice and rats has been measured in four different bioassay studies.

1. Animal Studies

a. *Inhalation Bioassays.* In response to the Advance Notice of Proposed Rulemaking, the Dow Chemical Company submitted the results of a study of rats exposed to 0, 3, 10, and 40 ppm of EDB for 13 weeks (Exhibit 5–31). Epithelial hyperplasia of the nasal turbinates was observed in rats exposed to EDB at 10 ppm. After a post-exposure period of 88 days, reversion to the normal state had occurred. At 40 ppm, hyperplasia and non-keratizing squamous metaplasia of the nasal turbinates, decreased weight gain, and increased kidney and liver weights occurred. Most of these effects regressed after an 88 day post-exposure period. No animal was exposed to EDB for more than 13 weeks, and no animal was followed for more than 6 months. This study was not designed to evaluate the potential carcinogenic effects of chronic exposure to EDB and thus, can neither confirm or deny its carcinogenicity. The investigators, Nitschke et al., concluded that because of "the lack of any lesion subsequent to repeated exposure to 3 ppm EDB, short-term repeated exposure to these concentrations of EDB would not be expected to result in any long-term irreversible effects upon the nasal turbinates or other tissues of the body" (Ex. 5–31, p. 2). Because this was not a scientifically sound bioassay OSHA does not feel that such a conclusion is supported by this data.

The National Toxicology Program [NTP] of the National Cancer Institute [NCI] conducted an inhalation carcinogenesis bioassay for EDB (Ex 4–15). Male and female Fisher–344 rats and B6C3F1 mice were exposed to 10 and 40 ppm of EDB for periods from 78 to 103 weeks. Each treatment group consisted of 50 male and 50 female animals. The durations of exposure were 90 weeks for 40 ppm, 103 weeks for 10 ppm and 104 weeks for controls. The dose levels were selected based on a 90–day test in which 40 ppm was found to be the maximum tolerated dose.

Mice were killed by interperitoneal injection of sodium pentabarbital and examined according to standard histopathological techniques. Three cross sections were taken through the nasal cavities in order to define nasal tumors. The lengths of exposure for each species, sex and dose level were 103 weeks for low dose male rats (10 ppm), 88 weeks for high dose male rats (40 ppm), 103 weeks for low dose female rats (10 ppm), 91 weeks for high dose female rats (40 ppm), 78 weeks for lose dose male mice (10 ppm), 78 weeks for high dose male mice (40 ppm) , 103 weeks for low dose female mice (10 ppm) and 90 weeks for high dose female mice (40 ppm).

Survival rates in the high dose male and high dose female rats were significantly less than in the control or low dose groups. This could have decreased the tumor rate by shortening both the exposure time and the time available for the tumors to appear.

Survival rates in both the low dose male and female mice were significantly shortened compared to the controls. Similary this could lead to a decrease in the tumor rates by shortening the exposure time and time available for tumors to appear. The pathology reports for rats and mice describe a variety of neoplasms which were increased over the control groups.

The national Toxicology Program and NCI concluded that EDB was carcinogenic to rats, causing increased incidences of carcinomas, adenocarcinomas, and adenomas of the nasal cavity, hemangiosarcomas of the circulatory system (spleen), mesotheliomas of the tunica vaginalis (males only), adenomatous polyps of the nasal cavity (males only), fibroadenomas of the mammary gland (females only), and alveolar/bronchiolar adenomas and carcinomas (females only). EDB was also considered to be carcinogenic for mice, causing increased incidences of alveolar/bronchiolar adenomas and carcinomas, hemangiosarcomas of the circulatory

system (females only), fibrosarcomas in the subcutaneous tissue (females only), carcinomas of the nasal cavity (females only), and adenocarcinomas of the mammary gland (females only).

Nonmalignant toxic effects of EDB inhalation included damage to the respiratory system, liver, kidney, testis, eye, and adrenal cortex. A dose-response was apparent for hepatic necrosis, toxic nephropathy, and testicular degeneration and atrophy. Testicular segeneration and atrophy were found in 2 out of 50 of the male controls, 12 out of the 50 low dose males, and 23 out of the 49 high dose males. Some of the cases of testicular atrophy may have been associated with testicular tumors and mesotheliomas rather than directly resulting from EDB exposure. The increase in numbers of testicular tumors was not statistically significant, as can be seen in Tables 1 and 2.

A chronic inhalation bioassay was conducted by NIOSH to evaluate the effect of disulfiram on carcinogenic and other toxic effects of EDB. (Ex 4–18) The findings have been reported in several publications (Ex. 4–18) Plotnick et al., 1979; Wong et al., 1982; Ex. 4–7). The study exposed four groups of 48 male and four groups of 48 female Sprague-Dawley rats to room air or 20 ppm EDB for 7 hours per day for 5 days per week over an 18 month period. Diets which contained 0.05% disulfiram were given to one set of controls and EDB exposed rats.

Rats were observed for clinical signs. Body weights were recorded weekly for the first 14 weeks and monthly thereafter. Both the EDB and disulfiram exposures reduced survival rates. A hematological examination was performed and a complete necropsy was performed on all rats, including gross and microscopic examination. Findings were statistically evaluated and are discussed in the Final Report (Ex. 4–18). The numbers of rats with tumors were as follows: 15 out of 96 controls on the diet, 13 out of 96 controls on the disulfiram diet, 54 out of 96 EDB exposed rats on the control diet, and 90 out of 96 EDB exposed rats on the disulfiram diet.

The report states its findings as follows: "Male rate receiving EDB exposure has significantly higher tumor incidences in spleen, adrenals and subcutaneous tissues than either the control or disulfiram tested rates. Also a significant finding was the high incidence of hemangiosarcoma in the spleen of male rate exposed to EDB. Tumors were also found in the liver, kidneys, and lungs in these animals * * * Female rats exposed to 20 ppm EDB also showed significantly high tumor incidences in the spleen (hemangiosarcoma), adrenals and mammary glands. Tumors were also found in the liver" (Ex. 4–18, p. 31).

In rats, the previous NCI/NTP study reported nasal tumor incidences of 0 out of 50, 39 out of 50 and 41 out of 50 for 0, 10 and 40 ppm in males and 1 out of 50, 34 out of 50 and 43 out of 50 for 0, 10, and 40 ppm in females. The presence of nasal tumors was not published in the original NIOSH publications. However, nasal tumor data from the study were made available to the reviewers for use in the EDB risk assessments. (SRI 1982, Ex.11)

When disulfiram was included in the diet, the toxicity of EDB was enhanced by every measurement in the study. Rats inhaling 20 ppm of EDB did not have increased incidence of testicular changes compared to controls; however, 90% of the male rats inhaling 20 ppm of EDB combined with 0.05% disulfiram in the diet developed testicular atrophy. These findings are summarized in the NIOSH report. (Ex. 4–18, Table 7)

In the NIOSH and NCI/NTP studies, four doses—0, 10, 20 and 40 ppm—were used for relatively long perious of time. The exposure duration for the 20 ppm groups. (NIOSH) was 18 months (78 weeks). For the NCI/NTP study at 10 ppm and 40 ppm the exposure duration ranged from 78 weeks to 103 weeks. The strain of rats in the two studies differed. Thus, two well-conducted inhalation studies demonstrated that EDB is a potent carcinogen not only in two strains of the same animal, but also in two different spacies at three different doses.

b. *Oral Administration Studies* NCI published this study in March 1978 as a final technical report entitled "Bioassay of 1,2-dibromoethane for possible carcinogenicity". (Ex. 4–17) The information had been released in preliminary reports (Olsen et al., 1973; Powers et al., 1975; NIOSH Criteria Document, 1977 and a Current Intelligence Bulletin on EDB, 1975). Osborne-Mendel rats and B6D3F1 mice were administered either of the does levels of EDB in corn oil by stomach tube 5 days per week and the responses were compared with two control groups, of which one received corn oil and the other had no treatment. Concentrations of 4% were used in the rat bioassay and 1–2% in the mouse bioassay.

Groups included 50 males and 50 females for each does and species. In addition, for each species, 20 animals of each sex were vehicle controls and 20 animals of each sex were untreated controls. Time weighted averages for the high and the low does groups were 41 and 38 mg/kg/day for male rats, 39 and 37 mg/kg/day for female rats, and 107 and 62 mg/kg/day for male and female mice, respectively.

Animal were weighed weekly for the first 10 weeks and monthly thereafter. Doses were administered five days per week according to most current body weight. All animals fo one sex received the same dose.

Survival rates and body weight changes in the rats indicated toxicity at both the high and low doese. These effects were apparent in males and females after 10 weeks. The toxic responses in the high does male and female rats led to the suspension of the dosing at week 17 for 13 weeks, and a reduction of the does to 40 mg/kg/day for the remainder of the study. The last weeks of the study used cyclic administration (four weeks of EDB alternated with one week of no dosing). The bioassay clearly utilized doses which exceeded the maximum tolerated does [MTD] and one-half MTD.

The results of this bioassay are tabulated in Exhibit 11, Table 11 C–4 p 67.

A statistically significant increase in squamous cell carcinomas of the forestomach were observed in male and female rats and in male and female mice dosed with EDB. The female rats also has statistically significant increases in hepatocellular carcinomas, while the male rats had nonsignificant increases in hepatic lesions. Hemangiosarcomas were dound in male and female rats and the incidences were statistically significant in the males. Male and female mice had statistically significant incidences of alveolar/bronchiolar adenomas.

Based on these findings, NCI concluded that EDB is an animal carcinogen. In addition, the International Agency for Research on Cancer (IARC) concluded in 1977 that EDB was carcinogenic to rats and mice, based solely on the NCI oral gavage study.

c. *Skin Painting Studies.* Van Duuren et al. (Ex. 4–19) included EDB in a chronic skin painting study in Ha:ICR Swiss mice. In the first experiment EDB was dissolved in acetone and 75 mg of it were painted once on the shaved backs of 30 mice. Starting 14 days later, 0.005 mg of a cancer promoting substance (phorbol myristate acetate) dissolved in acetone was painted on the same site 3 days per week. Two mice developed papillomas. These findings were not statistically significant when compared to controls.

In a second experiment two dose levels of EDB (50 mg and 25 mg) were

applied to the shaved backs of mice 3 days per week. There were 30 mice treated at each dose level. The increase in skin papillomas, carcinomas and lung tumors was statistically significant in the 50 mg group. Lung tumors were also significantly increased in the 25 mg group. The doses were estimated by SRI (1982) to be 1875 mg/kg in the 75mg/mouse; 1250 mg/kg in the 50 mg/mouse; and 625 mg/kg in the 25 mg/mouse. The "distant" tumors found in the lung indicate that EDB penetrates the skin and can produce tumors away from the site of application.

OSHA believes that the studies described above unequivocally demonstrate that EDB is a potent animal carcinogen. EDB when administered by either inhalation, dermal skin painting or oral gavage induces carcinogenic responses at multiple sites. Tumors were found at the site of exposure, i.e., the site at which the highest concentration would be expected. The "contact-site" tumors were specific for the dose route and tumors were not seen at that site when the route of exposure was changed. For example, the forestomach tumors found in gavage studies were not observed in the inhalation studies; nor were the nasal tumors that were found in the inhalation studies observed in the oral administration or the skin painting studies. Tumors were also found in remote sites in each of the four studies. Moreover, certain primary cell tumors were common to the inhalation, oral gavage and skin painting studies.

2. *Epidemiological Investigations.* Few epidemiological reports are available concerning the health status of persons exposed to EDB. Those that are available are considered inadequate for assessing the potential carcinogenic risk of EDB to humans due to a number of limitations in study design and analysis, such as: The number of workers studied was small; the data on EDB exposure was missing or incomplete; and often the time since first exposure to EDB was too short to observe possible long-term health effects.

In response to an OSHA Request for Information on EDB in 1978 (43 FR 11227–11229), both the Dow Chemical Company and Ethyl Corporation submitted reports of three studies which examined the frequency of death due to cancer among persons occupationally exposed to EDB (Ex. 2–23, 2–11). In addition, a study of 53 Ethyl workers was later submitted (Ex. 7–6). OSHA is not aware of any other studies which attempt to assess the risk of cancer among persons exposed to EDB.

In the first study, Ott and his colleagues investigated the mortality experience of workers employed in two Dow EDB manufacturing plants. The report of this study was published in 1980 (Ex. 4–20). Workers at one plant (Unit 1), located in Texas, were exposed primarily to EDB, bromine, ethylene, sulphur dioxide, and chlorine. Workers at the second plant (Unit 2), located in Michigan, were exposed to EDB, as well as a variety of other chemicals, including several recognized human carcinogens such as arsenic and benzene and several substances which are carcinogenic in animals such as vinyl bromide, carbon tetrachloride, and chloroform. The number of workers who died from specific causes of death was compared to the expected numbers of deaths from those causes. Expected numbers of deaths were derived from age-specific and calendar period-specific mortality rates for U.S. white males.

In Unit 1, a total of 99 employees were identified who had been employed at any time between 1942 and 1969. As of January 1, 1976, 21 of these workers had died. This number did not differ substantially from the number of deaths that would have been expected, 19.5, but neither did it indicate the "healthy worker effect" commonly observed in industrial populations. The "healthy worker effect" is the effect observed when comparing mortality rates in the general population, which includes both employed and unemployed persons, to those of an employed population, who by virtue of their ability to work would be healthier. Consequently, occupational cohorts typically have substantially less mortality compared to the general population.

Examination of deaths due to cancer revealed that two workers died from cancer compared to the 3.6 expected. However, the small number of workers included in this cohort limited the study's power to detect relatively moderate excesses in cancer mortality. Statistical power is the ability of a study to detect an excess risk of mortality if such a risk is truly present. Generally it is considered desirable for studies to have at least 80% power to detect the risk of a specific magnitude. OSHA calculated that the statistical power of this study to detect a 1.5-fold increase in all cancer deaths was 17.8%. A 1.5–fold increase would correspond to an excess risk of 50%. Thus, this study's power of 17.8% was highly inadequate for detection of an excess cancer risk of 50%. Since cancer is such a common cause of death in the U.S., OSHA calculates the power to detect increases in risk of 50% or greater. (See OSHA Technical Submission #1 and #2 for a description of how statistical power was calculated).

In Unit 2, 62 workers were identified who had been employed between 1940 and 1975. Seven malignancies were observed versus 2.8 deaths expected (p less than 0.05). Five workers from this cohort had also been exposed to arsenicals; two subsequently died from lung cnacer. These two individuals had been exposed to arsenicals for 1.5 and 20 months respectively and to EDB for 102 and 111 months respectively. When the five workers exposed to arsenicals are included in the analysis, the lack of a "healthy worker effect" is noticeable. By January 1, 1976, the total number of workers who had died from all causes, 18, was slightly but not significantly greater than the 13.6 expected number of deaths. Of the seven deaths from malignancies, two were due to cancer of the digestive system, two were due to cancer of the respiratory system, and three were due to cancer of other sites. Both lung cancer deaths occurred in workers exposed to arsenicals as well as EDB.

When the five individuals who were also exposed to arsenicals were excluded from the analysis, a total of 15 deaths were observed compared to 13.0 expected. Five deaths from cancer were observed and 2.2 were expected (p less than 0.07). Excess numbers of deaths from non-malignant respiratory disease were observed in Unit 2 (3 observed versus 0.5 expected, p less than 0.05). This could indicate that EDB is associated with lung disease; however, the number of deaths from lung disease is too small to permit conclusions to be drawn.

Although the number of deaths due to cancer in Unit 2 appears to be somewhat elevated, a larger number of observations as well as a more detailed presentation by site and level of exposure would be needed before conclusions could be drawn about the cancer risk at this plant. This study had 11.7% statistical power to detect a 1.5-fold increase in cancer risk in Unit 2. For Units 1 and 2 combined, the statistical power was 25.9% to detect a 1.5-fold cancer risk.

Ott et al. (Ex. 4–20, p. 167) concluded: "The findings of this observational study need to be interpreted cautiously owing to the limitations in the size of the study population and the variety of toxic agents to which individuals in Unit 2 may have been exposed"* * * Findings of this investigation neither rule out nor establish EDB to be a human carcinogen.

The second and third studies were investigations of workers at two Associated Octel plants in Great Britain, by Turner and Barry. The results of

these two studies were published in 1979 (Ex. 7–10). In addition, Turner has furnished tables to OSHA which complete the follow-up of the workers at both plants through 1979 (Ex. 7–11). No information concerning exposure levels to EDB or other chemicals in either plant is available.

In the first plant (Factory B), located in Almwch, the vital status was determined for 273 workers with potential exposure to EDB who had been employed at any time between 1952 and 1975. Of these 273 workers, 36 were known to have died by the end of 1979. Eleven of these 36 workers had died from cancer. Turner and Barry concluded: "No evidence of any increase in the death rates from cancer could be detected."

The technique used to analyze the mortality experience at the Almwch plant is considered crude because it inadequately controlled for differences in cancer mortality by age and calendar time period. For example, the study cohort's mortality during 1954–1979 was compared to local mortality rates during 1975. Because cancer mortality rates have risen over time, this comparison would result in an underestimation of risk. In addition, this study is so small that it had low statistical power to detect excess cancer risk. Hence, this study's finding can be, at most, inconclusive.

In the second plant (Factory A), located in Hayle, an initial list was complied of 242 workers who had been employed during 1947 or later; some of these workers had been employed since 1940. Of these 242 workers, 84 were eliminated from the analysis due to insufficient information, and an additional 41 were dropped because they had been employed for fewer than 4 years. Of the remaining 177 workers, 39 had died between 1947 and 1979. Five of these deaths were due to cancer, including two deaths from cancer of the bronchus. The mortality of the study cohort during 1940–1979 as conpared to local population mortality rated during 1961 and 1970. The authors concluded that no excess cancer risk was observed at this plant.

As in the Almwch plant, the analysis of the Hayle plant inadequately controlled for differences in cancer mortality by age and calendar time period. Because of the methodologic limitations and the small number of workers included in this study, no conclusions can be drawn concerning the cancer risk at this plant.

The mortality of fifty-three Ethyl EDB production workers was studied in 1976 (Ex. 7–6). Their length of exposure to EDB ranged from 3 months to 10 years. Ethyl found EDB levels in various plants which ranged from "nondetected" to 4.5 ppm. Of 95 samples taken, 66 were below 0.15 ppm, 8 were between 0.5 and 1 ppm and 231 fell between 1.0 and 4.5 ppm. The one death in this group was from cancer of the kidney. This study is too small to contribute useful information on the human carcinogenicity of EDB.

In summary, OSHA believes that the currently available epidemiologic studies of workers exposed to EDB cannot unequivocally indict EDB as a human carcinogen. These studies are inadequate for this prupsoe due to small study populations, resulting in low statistical power to detect excess cancer risk. In addition, the studies by Turner and Barry failed to use standard epidemiologic techniques to control for changes in age-specific cancer mortality rates over time.

C. Reproductive Effects

The effect of EDB on male reproduction has been investigated in animals and humans. The animal studies clearly establish the potential for human reproductive toxicity. Although the human epidemiologic studies do not show an effect on reproduction, due to the methodologic limitations they do not rule out the possibility of EDB having an adverse effect on the human reproductive system.

1. *Human Studies.* In 1977, NIOSH (Ex. 7–7c) evaluated the reproductive health of EDB production workers at the Houston Chemical Company. Most the EDB production systems at this plant were entirely enclosed. The plant installed a new EDB unit in 1977 to replace a deteriorating unit. Of 25 personal breathing samples and 8 general area samples, EDB was detectable only in a single general area sample (0.88 mg/m ^{3} =0.115 ppm). Ethylene dichloride, another animal carcinogen, was detectable only in a single personal breathing sample(1 mg/m ^{3} =0.247 ppm). Company sampling data indicated that EDB exposures ranged from less that 1 to 53 mg/m ^{3} (less than 0.130 to 6.897 ppm) when the old EDB unit was in use.

According to the NIOSH Criteria Document for EDB published in 1977, the lower limit of detection for the described sampling and analytical method 0.0002 ppm. Hence, the levels of EDB exposure in the Houston Chemical Plant must have been extremely low in order to have escaped detection. In the one area where EDB was detected by the NIOSH survey, supplied-air respirators and gloves were required for workers.

NIOSH medical personnel evaluated 22 workers potentially exposed to EDB at the time of the survey, 2 workers with past exposure to the old EDB unit, and 9 non-exposed workers at the plant. No significant differences in testosterone levels, follicle stimulating hormone levels, and sperm density were observed in the exposed workers compared to the non-exposed workers. However, lutenizing hormone (LH) levels were significantly increased in EDB exposed workers compared to non-exposed workers (p less than 0.02).

LH is a pituitary gonadotropin that regulates testosterone production by Leydig cells in the testis. The elevated LH levels in the EDB workers may indicate that the Leydig cells require abnormal stimulation to produce the normal amount of testosterone. The data also indicated a difference in median sperm count between the exposed workers (54 million cells/ml) and the non-exposed workers (79 million cells/ml).

NIOSH concluded: "The available data indicates that there is a potential toxic effect of ethylene dibromide, as indicated by the LH levels; but there is no overall statistically significant effect on sperm count or evidence of testicular toxicity * * * It should be strongly emphasized * * * that this study on ethylene dibromide does show some signs of potential testicular toxicity and it should be treated as a toxic agent." (Ex. 7–7c, p. 10).

Dibromochloropropane (DBCP) is a chemical that is very similar in structure to EDB. DBCP caused a dramatic increase in sterility among exposed male workers. OSHA promulgated a standard for DBCP in 1978 based on its adverse reproductive effects. NIOSH suggested that the difference in findings between reproductive studies of workers exposed to dibromochloropropane (DBCP) and this study of EDB workers might be due to EDB acting by a different mechanism on the testis, or being a weaker toxic agent. The difference may be due to non-epidemiological reasons such as the very low exposures to EDB, or the small number of exposed workers studied.

OSHA calculated that this study had about 17% statistical power to detect a 1.5-fold risk of having a sperm count below 25 million cells/ml. This was based on the 11.1% of the non-exposed workers (1 of 9) that had a sperm count below 25 million cells/ml.

Dr. Richard Levine surveyed the reproductive experience of 102 EDB exposed workers employed in fumigating papaya or packing fumigated fruit (Ex. 5–36). The survey took place in

Hawaii in March 1981, and consisted of interviews to ascertain live births, miscarriages, stilbirths, and early infant deaths. Seventeen males and seven females had never been married and therefore were not included in the analysis. Levine also excluded the remaining 16 male employees because he deemed the small number of preemployment births for wives of male employees to be insufficient for analysis. About 94% of the 62 female employees included in the analysis had been packers; hence, their exposures to EDB were quite low.

Expected numbers of births were derived from national birth probabilities specific for maternal birth cohort, for age, parity, and race (white, all other). Standardized Fertility Ratios (SFR's) were computed by dividing the observed numbers of live births by the expected numbers of live births. Levine compared the SFR's for the preemployment and employment periods in order to determine whether EDB exposure had reduced fertility.

Levine et al. (1981) had previously tested this method by surveying fertility among DBCP workers, a high proportion of whom has severly depressed sperm counts (12 of 39 male workers). They concluded that the impaired fertility of the DBCP workers could have been detected by surveying live births. However, they characterized this study method as "not a sensitive indicator" for risk of infertility. Their survey indicated that fertility was reduced by 60% to 80% among workers exposed to DBCP. Statistical power to detect decreased fertility would have been greatly reduced if DBCP had been a less severe testicular toxin.

For married female workers with EDB exposure, the SFR was 1.71 compared to the combined SFR of 2.36 for married female workers prior to employment and married female workers with no EDB exposure. This difference between the two SFR's (equal to a 28 percent reduction in fertility) was not statistically significant. Unmarried female workers did not exhibit any reduction in fertility; however, the expected number of births for this group was small (0.5) and thus unstable. Because of the effect of employment status on female workers' fertility, it would have been preferable to compare the exposure employed group solely with the non-exposed employed group. Unfortunately, the expected number of births was small (2) and unstable among the non-exposed group of female workers.

Levine calculated the statistical power of his method to detect significant (p less than 0.05) decreases in fertility among married female workers. According to his calculations, this study had roughly 40% power to detect a 50% decrease in fertility. The study had roughly 80% power to detect a 70% decrease in fertility. Generally, a power of 80% or higher is considered desirable in order to lessen the probability of a failure to observe a true risk. Hence, EDB would have to exert an effect comparable to DBCP in order for this study to have sufficient statistical power. Commenting on his statistical power calculations, Levine stated: "Due to the small number of births expected during exposure, however, the analysis lacked the power to detect a mild or moderate effect" (Ex. 5–36, p. 6).

Levine compared the incidences of miscarriages, stillbirths, and early infant deaths per reported pregnancies during the preemployment period with the incidences during the employment period of the exposed and non-exposed workers. No clustering of these events was apparent in relationship to EDB exposure. This analysis had such a small number of pregnancies that the power to detect an increase in risk of these events was low.

Levine concluded that this study "has revealed no evidence of a severe decrease in fertility related to low-level exposure" and that "there was no indication of an abnormal aggregation of miscarriages, stillbirths, and early infant deaths with EDB exposure" (Ex. 5–31, p. 8).

Levine also surveyed the reproductive experience of employees of Ethyl Corporation at the EDB production plant in Magnolia, Arkansas (Exhibits 5–31D, 5–36). This survey took place in April 1981 and initially included 164 employees who were interviewed concerning their reproductive history. Subsequently, Levine excluded from the analysis 6 female employees, 10 never-married male employees, and 12 male employees who had previously worked at other chemical plants. Levine used the same method of analysis for this study as for his study of the Hawaiian papaya workers. Standardized Fertility Ratios (SFR's) were calculated for preeemployment and employment periods for all males. Exposures were estimated by duration of exposure and intensity assigned to each job title.

Fertility of male employees exposed to EDB was not reduced relative to male employees not exposed to EDB. The ratio of SFR's for exposed workers to non-exposed workers was 1.25, with 90% confidence limits of 0.85–1.78. Hence, there is a 90% chance that the true fertility of EDB exposed workers in this study is not reduced by more than 15% compared to non-exposed workers. However, the nonexposed category included preemployment fertility which may have been reduced because of marital status. Thus, if the exposed employees' fertility were reduced it may not have been observed in this analysis.

When the married male workers were classified by intensity of exposure, no gradient of reduced fertility with increasing exposure was apparent, except in the greater than 3 year exposure category. Levine felt that because this reduction was not statistically significant and was uniformly distributed between low and high intensity jobs, it could not be related to exposure duration. However, Levine had already stated that small numbers of expected births precluded valid inferences about the possible effects of chemical exposure for the categories "none," "EDB/VB," and "area 1" used in the study.

Levine concluded that this study "revealed no evidence for a decrease in fertility related to exposure to ethylene dibromide, vinyl bromide, or a multiplicity of chemicals which may include ethylene dibromide and vinyl bromide" (Ex. 5–31D, p. 7). Also, Levine found no evidence for an association between chemical exposure and miscarriages, stillbirths, neonatal deaths or birth defects.

Dr. James Dobbins of the University of Tesas critiqued the studies of Dr. Richard Levine (Ex. 5–55). He disagreed with Levine's conclusion that EDB does not lead to a severe decrease in fertility, stating that "occupational exposure to EDB could have a strong effect on fertility and still produce the results obtained by Levine" (Ex. 5–55, p.1). Dobbins enumerated the following disadvantages of Levine's use of SFR's:

(1) The expected fertility rates for women are dependent on their observed fertility (parity). If a woman's fertility has been reduced by chemical exposure, her expected fertility also will have been held artificially low. Hence, the expected fertility "will depend on and always be close to observed fertility"(Ex. 5–55, p.5). This would result in underestimation of risk of reduced fertility.

(2) Differences between high fertility and low fertility populations are greater at older ages. Because workers are younger during the period preceding employment, a high fertility occupational cohort would have a pre-exposure fertility close to expectation. For a high fertility occupational cohort an employment period SFR would be based on an underestimate of expected fertility and hence comparing preemployment and employment period

SFR's would result in an underestimate of risk.

(3) The SFR's of married female workers are derived from the national birth probabilities for both married and unmarried women. Because women who are married have higher birth rates, expected fertility is underestimated by this procedure. Also, fewer women workers were married during the preemployment period and employed women tend to have lower fertility than unemployed women. Comparisons between preemployment periods and employment periods are problematic because of underestimates expected fertility.

(4) The SFR methodology has low statistical power because few women (or men) have been exposed exclusive to any single chemical and because total fertility in the U.S. is now less than 2 children per woman. Dobbins stated that fertility impairments of the magnitude of that related to DBCP rarely occur.

Regarding the study of Hawaiian papaya packers, Dobbins commented that most of the studied women were Asian and that Hawaiian Asians have higher fertility than U.S. whites. Hence, using U.S. birth probabilities would underestimate expected fertility. Dobbins also did not agree with Levine's basis for excluding males from the study: insufficient numbers of births for analysis among males. Dobbins pointed out that the small number of births for male employees may have been due to EDB exposure. In addition, Dobbins was concerned that including women who were only potentially exposed to EDB would result in underestimation of risk.

Another problem mentioned by Dobbins was the low statistical power of the study, which was exacerbated by use of a two-tailed test of significance. Dobbins stated that the employment SFR would have to decline 69% in order to detect a statistically significant decrease in fertility. Dobbins also believed that it was inconsistent of Levine to draw conclusions about unmarried employment period SFR's which were dervied from very low expected values (0.54), after stating that SFR's with expected values less than 3.0 were "insufficient for analysis." Dobbins also criticized Levine for combining fetal losses, stillbirths, and infant deaths in one measure of adverse reproductive outcome, uncontrolled for maternal age and other pertinent variables. Dobbins described Levine's findings for the Hawaiian papa7a packers:

> There is evidence of a decline in fertility associated with potential low-level exposure to EDB, but this decline is not statistically significant because of small sample size, low post-exposure fertility, and conservative methodology (Ex. 5–55, p. 14).

Concerning the study of Ethyl Corporation employees in Magnolia, Arkansas, Dobbins stated that the study had the following problems: small sample size, poor measures of exposure, inclusion of minimally exposed persons in the sample, and use of a two-tailed test of significance. Dobbins stated:

> In spite of a number of conservative biases in this study, especially small sample size and slight or unknown levels of exposure, there was some evidence of reproductive impairment due to exposure to EDB. Many of the results were equivocal and the study is clearly not an indictment of EDB. On the other hand, these results cannot be used in any way to exonerate EDB (Ex. 5–55, p. 17).

OSHA believes that there are a number of difficulties with the Levine studies which limit the extent to which their findings can be generalized to EDB-exposed populations. Choosing an appropriate comparison group that closely resembles the study group is crucial. National birth probabilities may not be appropriate for purposes of comparison with small local populations. Another problem when studying male workers is that they are, in a sense, proxy respondents for their wives. This could lead to under reporting of miscarriages and stillbirths. Yet another problem is that studies of births need quite a large cohort to detect toxic effects on the reproductive system, if those toxic effects are not as catastrophic as those of DBCP. Poorly defined exposure histories add further to the difficulties in the study's interpretation.

A reproductive study was conducted by Ter Haar (1980) among Ethyl Corporation workers. Fifty-nine sperm samples were collected in 1977, and 24 in a follow-up study in 1978. The author reported that the sperm counts compared favorably with published levels in the general population. The counts in workers with exposures below 0.5 ppm were compared with counts in workers with exposures between 0.5 and 5 ppm. Forty workers had exposures of less than 0.5 ppm and 19 had exposures in the higher range. The apparent trend towards lower sperm counts in the 0.5 to 5 ppm range was not considered significant by the authors. Ter Haar did not specify the protocol followed in obtaining and processing the specimens. Furthermore, no concurrent comparison group was sampled, which precludes discovery of any artifacts from laboratory practices. Because of its methodological limitations, this study should be considered only as an observational report.

Wong et al., 1979 conducted a retrospective study of fertility among men exposed to EDB at four U.S. production plants (Ethyl, Dow, Great Lakes and Houston Chemical). The authors used reproductive histories of the workers' wives as a surrogate measure of male fertility. The numbers of live births to the wives of exposed workers were compared to expected numbers derived from national fertility rates for women adjusted for maternal age, parity, race, and calendar year. Standardized birth ratios were calculated dividing the observed number of births for the married male workers by the expected number of live births. A total of 297 couples with 1092 person-years of observation were included in the study.

For three of the plants (Ethyl, Dow, Great Lakes), the plant-specific standardized birth ratios of the workers were close to unity (i.e. were not significantly higher or lower than national fertility rates). One plant's (Houston Chemical) standardized birth ratio was significantly decreased compared to the national fertility rates (11 births observed, 22.2 births expected, p less than 0.05). No exposure data were available for this plant.

Wong et al. characterized reproductive performance of wives as a measure that could provide "only a limited assessment of the exposed worker's fertility," (p. 99) mentioning that "reproduction performance is determined by a complex interaction of volitional and biological variables * * *" (p. 101) The authors reported that the average exposure level to EDB was not higher at the plant with decreased live births (Houston Chemical) compared to the other plants, so that the decreased births could not be attributed to differences in exposure levels. The authors pointed out that about 33% of the couples from the Houston Chemical plant had a sterilized partner compared to 30% of couples in a national survey conducted in 1976.

For all four plants combined, the statistical power to detect a 20% decrease in fertility was reported by Wong et al. to be 90%. This power calculation might not be correct. OSHA calculated a power of 60% to detect a decrease of this magnitude. Moreover, the power of the study as determined by the authors did not exclude person years of exposure during pregnancy or surgically sterilized workers. Other factors which limit interpretation of Wong et al.'s study findings include lack of consideration of other reproductive indicators (miscarriages and stillbirths), potential differences in birth rates

between the regions in which the plants were located and the U.S. as a whole, ethnic differences in plant populations which could affect the rates, and difficulty in deriving expected numbers from both married and unmarried persons for comparison with married persons. Finally, the exposure categories chosen seem unbalanced, with no intermediate level, and no explanation by the authors of their reasons for choosing these categories.

Equitable Environmental Health (1977), Inc. studied a British EDB production plant. The authors compared live births for 41 married workers with either occasional, regular or irregular exposures to EDB in the workplace to the live births for 41 married workers who were not exposed to EDB. EDB exposure levels were not reported. The birth rates were adjusted for parity and age of the father. EDB exposed workers did not have lower birth rates than non-EDB workers. Interpretation of this study is hampered by the very small sample size, incomplete exposure determinations, general limitations of using live births to assess fertility, and the unexplained and unusual adjustment for paternal rather than maternal age.

2. *Animal Studies.* Reproductive toxicity of EDB has been studied in rats, mice, chickens, rams and bovine bulls. These studies were summarized by NIOSH in 1977 and reviewed by Rannug in 1980. Those studies which are appropriate for quantitative analysis of dose response relationships will be discussed. An overview of the research on reproduction is also provided for reference.

In 1955, Bondi et al. showed that in hens fed grain which had been fumigated with EDB the weight of eggs and egg production rates were reduced. EDB concentrations on the grain ranged between 50–60 and 270–320 ppm. When hens were given EDB in total feed ranging from 10 to 30 ppm, EDB levels of 10 ppm. in total feed produced egg-weight reductions by the eighth week. The effects were reversible for hens that laid smaller eggs and did not cease laying eggs. Alumot et al. (1968) reported that feeding of EDB fumigated mash to chicks reduced egg size and number of eggs but did not affect onset of egg production. The chicks were exposed from 1 day of age, fed diets with 40 ppm EDB or control feed, and growth parameters were measured.

In another experiment, 1 year old laying hens were exposed to 100 ppm EDB in feed and the fertilization rates measured. EDB reduced the number of eggs and the fertilization rates. Male chicks, 3 days old, were fed 0, 80 and 180 ppm EDB in the diet and growth parameters and reproduction parameters were measured at 3 months. Sexual development was not affected by EDB in those male chicks. Fertility was also measured in mature cockerels fed 150 and 300 ppm EDB in diets for 2, 4, 8 or 10 weeks. These males' fertility was not affected by EDB.

Based on this series of studies, it was concluded that EDB in diets would reduce growth rate and egg production but would not alter the onset of egg laying in hens or sperm production in male chickens. Other studies (Rannug, 1980) demonstrated that EDB did not alter follicle stimulating hormone (FSH) production and that the EDB effects were not altered by injection of pituitary extract. These studies show that EDB has effects on reproduction in female chickens and that the effects are specific to the reproductive system rather than the result of generalized systemic morbidity. A difference in uptake of radio-labelled albumin and globulins into the egg yolk and ovarian follicles was shown in EDB treated hens. Due to the biologic differences between human reproduction and fowl reproduction, these studies have a somewhat limited utility for analyzing human reproductive risk.

A series of male reproductive studies were carried out in bulls (Amir and Volcani, 1965; 1967; Amir, 1973, 1975; Amir and Lavon, 1976; Amir et al., 1977; NIOSH, 1977; Rannug, 1980). These studies demonstrated toxic effects of EDB on spermatogenesis. Reproductive impairment, as measured by decreased sperm density and motility and sperm abnormalities, was found after two or more weeks of exposure to 2 or 4 mg/kg EDB in the diet. Studies in 1973 and 1977 by Amir and colleagues investigated the mode of reproductive toxicity in bulls given EDB. The authors concluded that the actions of EDB occur in the testes affecting the spermatogenesis and sperm maturation. Spermatozoa with deformed heads and tails were produced. Deoxyribonucleic acid (DNA), amino acid and lipoprotein changes were also reported in spermatozoa.

Eljack and Hrudka (1979) reported dose response data on the effects of EDB on the sperm of 18 Columbia rams. Four controls were studied. Subcutaneous doses in olive oil of 7.8, 9.8 and 13.5 mg/kg/day of EDB were administered for 12 days so only the preceding lower doses were used. Systemic reactions were seen at 16.9 mg/kg/day therefore only the three lower doses were used. Sperm morphology and motility were determined. Normal findings were seen over the two exposure weeks and for three weeks thereafter. Declines in sperm motility began to be observed at five weeks and were greatest between 9 to 12 weeks. Sperm had returned to normal by week 15.

A mitochondrial "marker" enzyme was also altered. Mitochondrial sheaths were altered, acrosomes were abnormal, and extensive nuclear abnormalities were seen. The effects were dose related and significant at the 7.8 mg/kg/day dose. The four weeks delay in onset of effects suggest that EDB's actions at these dose levels occur primarily in the meiosis and multiplication stage rather than acting directly on the differentiating sperm organelles. These findings are consistent with an action on DNA synthesis and suggest that EDB is a chemical mutagen, according to the authors.

Edwards, Jackson and Jones, (1970) studied reproductive effects in male Wistar rats and male RF/Hirak mice. Five daily doses of 50 mg/kg of EDB injected intraperitoneal (IP) reduced average litter sizes from matings which occurred 3 to 4 weeks after dosing. This suggests an action on spermatids. The isolated metabolite S-(2-hydroxyethyl)-cysteine has no effect on mouse fertility. Thus, EDB or an alkylating metabolite is responsible for the diminished fertility effects Tissue distribution of the labelled molecule of EDB was measured in mice. At one hour and 24 hours there was 3.1 and 0.66 per cent and 1.1 and 0.23 percent of the administered dose in the cauda epididymis and testes respectively. The highest concentrations of EDB were found in the small intestine at 1 hour (34%), in the large intestine at 3 hours (15%) and in whole blood at 24 hours (6.2%). IP administration at a dose level of 40 mg/kg was used in this experiment. Only 5% of the dose was excreted in the bile. If in fact EDB conjugates to glutathione in the liver, a higher percentage of EDB should be seen in the bile. Since only 54% was excreted this may mean either the EDB conjugates formed in the liver are not excreted in the bile or that they are formed in non hepatic tissue and are not available for biliary excretion.

Short et al. (1979) studied the effect of inhalation of EDB on reproduction in Charles River (CD) rats. Males were exposed by inhalation to 0, 19, 39 or 89 ppm EDB 7 hours per day, 5 days per week for 10 weeks. The rate of reproduction, fertility, mortality and morbidity were measured. The effects of EDB were dose related. Rats exposed to 0 and 19 ppm had normal weight gain and food consumption. At 39 ppm body weight gains were reducted (443 grams vs. 484 grams at exposure week 10) while decreases in both body weight

and food consumption occurred at the 89 ppm level. A high mortality rate (7 out of 33) was also observed in male rats exposed to 89 ppm.

In a female reproduction study, groups of 20 females were exposed for 21 days to 0, 20, 39 or 80 ppm EDB for 7 hours per day 7 days a week. Rats at the 80 ppm group did not cycle normally for 3 or 4 days after exposure. The rats were placed with proven males for a 10 day period. All females became pregnant with normal appearing uterine contents based on total implants, viable implants and resorptions. For females, body weight was reducted at 80 ppm but not at 20 and 39 ppm. A high mortality rate (10 out of 50) was seen at 80 ppm.

Male reproductive performance was completely blocked at the 89 ppm dose, but all males exposed to lower doses (0, 19 and 39 ppm) did impregnate at least one female rat. Estrus of the high dose female rats were adversely affected. The females had normal numbes of viable implants and resorptions. Severe teticular atrophy and reduced serum testosterone concentrations were observed at the highest dose (89 ppm) but not at 19 or 39 ppm. Atrophy of the epididymis, prostate and seminal vesicles was also found in the 89 ppm group on histopathology. In addition, prostatities and sperm granuloma occurred in high dose males. Some prostatitis also occurred in the lower exposure groups.

Biochemical paramenters were measured in the serum, liver and testes in male rats administered 0, 10 or 100 mg/kg EDB orally. No differences were fund in SGPT, SGOT, or BUN, two, four, or 24 hours after dosing. Non-protein sulfhydryl (NPS) activity was depressed (67% of the control value) in the liver at 2 hours, but was not changed in the testis. The four and 24 hour values are the same as control. The tissue distribution was measured after oral administration of 10 or 100 mg/kg EDB which contained C^{14}. Four hours after administration, the concentration in tissues from 3 rats were highest in the stomach and kidney, and lowest in the testis at both dose levels. The deoxyribonucleic acid (DNA) and ribonucleic acid (RNA) and protein varied in relative content of labelled C^{14}, but DNA was highly labeled in the testis.

This study (Short, 1979) show that inhalation of 80 ppm EDB in the air for extensive periods (7 hours per day for 5 or 7 days per week) produces severe toxicity in male and female rats, including adverse effects on survival, body weight, food consumption, and reproduction. The test is is a target organ. The effects are dose related with little change in reproductive function at 20 or 39 ppm concentrations. For males or females, C^{14} labelled EDB is clearly bound at 4 hours to DNA, RNA protein in the liver, kidney, testes (lowest in testes), and stomach which suggests potential for an action on the organs.

The previous findings in the male reproduction study (Short, 1979) indicate that 19 and 39 ppm exposures did not produce dominant lethal mutations. Teramoto et al. (1980) conducted a dominant lethal study for EDB and DBCP in rats and mice. No effect was produced by 10 or 30 mg/kg of EDB orally for rats or 100 or 150 mg/kg EDB for mice. DBCP and a control mutagen were positive in the same study. This is a well conducted study which shows that EDB may be weakly mutagenic *in vivo*. Edwards and Jackson (1970) investigated several metabolic and toxicologic aspects of EDB in mice and rats. The fertility studies used serial mating. EDB (50 mg/kg given to make rats and mice as a cumulative dose over 5 successive days by IP) produced a significant decrease in litter size in rats mated the third and fourth week after dosing but no differences were found in weeks one and two or weeks five through 10. In a comparable experiment, oral administration of 1 mg/kg of the EDB metabolite produced no effect on male mouse fertility.

Short et al (1978) studies teratogenic and embryotoxic effects of EDB inhalation during gestation in mice and rats. Charles River [CD] rats and CD-1 mice were used. Groups consisted of 15 to 17 rats and were divided into feed restricted and free access food groups. Starting at day 6, animals were exposed for 10 days to 20, 38 and 80 ppm EDB for 23 hours a day. Body weights, food consumption and survival were measured. Rats or mice were sacrificed on day 20 or 18 respectively. Fetuses were examined for skeletal and soft tissue anomalies by standard techniques.

One control group with food intake restricted to levels comparable to the food consumption of the 80 ppm groups was examined. Maternal food consumption and maternal and fetal body weights were reduced at 38 and 80 ppm. Reproductive changes were seen only at 80 pm. Deaths only occurred at 80 ppm. Dams exposed to 80 ppm had a reduced number of implants and no viable fetuses. The high percentage of resorptions in the 80 ppm group was evidence of considerable embryotoxicity.

The findings in treated mice were comparable to those of the rats. Groups of 18 to 20 were exposed to 0, 20, 38 and 80 ppm. Maternal food consumption and maternal and fetal body weights were reduced at 20 and 38 ppm dose levels. All animals in the 80 ppm group died. In the 38 ppm group, resorptions were increased and viable fetuses were decreased. The 20 ppm group also had an increased number of resorptions. These effects were embryotoxic but not necessarily teratogenic since changes occurred in food consumption and weight gains in the mothers. The increase in frequency of low body weight pups (runts) at 38 ppm in mice would not be considered a teratogenic response. The findings suggest a delay in fetal development with EDB treatment which would also be secondary to maternal effects.

While there are no reliable human data available to help assess the human reproductive effects of EDB, the available animal data clearly indicate that EDB causes adverse reproductive effects in the bull, rat and hen. In the absence of adequate human data OSHA feels it prudent and reasonable to assume that man is at least as sensitive as the most sensitive species for which data are available. Therefore, OSHA believes that several studies demonstrate that EDB could adversely affect mammalian reproductive development by interfering with the production of male gametes and the development of embryos.

D. Mutagenesis and Cytogenetic Effects

Mutation studies utilize techniques which measure specific aspects of the interaction between chemical compounds and cellular DNA. The five techniques defined below are utilized to measure mutagenic potential which is considered by some to be an indicator of carcinogenic potential. they are considered indicators because they demonstrate the test chemical's effect on DNA.

1. *Ames Assay*—The action of a chemical on cellular DNA (genetic code) is measured in a bacteria (*Salmonella typhimurum*). Mutagenesis is show when the chemical alters the DNA such that the strain of bacteria is transformed and acquires the ability to grow on a histidine deficient media. The number of colonies which grow is proportional to the potency of the chemical's interaction with DNA.

2. *Host-Mediated Assay*—Certain chemicals do not themselves act on DNA but are changed (metabolized) in the body to chemicals (metabolites) which can act on DNA. The host-mediated assay measures the formation of metabolites in rats or mice that act on DNA. In this assay the chemical and the indicator bacteria are injected together

into the peritoneum of the animal (host). After a period of time the bacteria are removed and its growth measured on the appropriate media. Transformed cells grow to form colonies; non-affected cells do not grow.

3. *Polymerase Assay*—This is a direct measure of damage to nuclear DNA from chemical exposure. When the DNA is damaged due to chemical interactions the injury is repaired by an enzyme known as DNA polymerase. The more chemical damage to the DNA, the greater the increase in activity. This test is more of a general measure of the test chemical's effects on DNA than the bacterial tests because it will measure nonspecific damage to the DNA.

4. *Dominant Lethal Mutation Assay*—When the damage to DNA is sufficient to produce a change in a gene's expression, a mutation occurs. Changes in genes critical to survival are lethal. When dominant genes are mutated by a chemical, the change may be lethal to the organism. This is a highly significant biological event and it is non-ambiguous. In the dominant lethal test male rats are exposed to the test chemical and then mated with normal females. Live births are counted and compared to the number of corporea lutea (measure of eggs released from ovary). The difference between live births and corporea lutea is related to lethal mutations.

5. *Deletion Mutation Assay*—Two types of mutations (changes in DNA are possible: A change in chemical components of DNA which alters the genetic code, and the deletion of parts of DNA which also alters the code. A deletion mutation assay is only a measure of the loss of parts of the genetic code.

The mutagenic effects of EDB have been reviewed in detail by NIOSH (1977), Rannug (1980) and IARC (1977). Mutagenic actions have been detected in a variety of *in vitro* and *in vivo* systems. A direct mutagenic action has been found using *Salmonella typhimurium* by Ames in 1971, Buselmair in 1972 and 1973, Brem in 1974, and McCann in 1975. EDB was also positive in the host-mediated assay in mice, with *S. typhimurium* G46. Using the polymerase assay unscheduled DNA repair was increased in opossum lymphocytes; and DNA damage was shown in mouse lymphoma cells at the thymidine Kinase Locus. *Drosophila melanogaster* studies showed an increase in x-chromosomal recessive lethal mutations for two consecutive breedings. Thus, EDB is a direct-acting mutagen based on a wide variety of tests.

Chemicals can produce deletion mutations without direct alkylation of the DNA resulting in mutagenic responses that are unlikely to predict cancer. In contrast, EDB was shown to produce mutations but not to produce deletion mutations. This suggests that the mutagenic responses of EDB could be predictive of carcinogenic interaction.

A specificity for EDB's mutagenic action is suggested by those tests which were not positive. They include the absence of deletion mutations in *S. typhimurium* shown by Alper and Ames in 1975 the absence of mutation with *Serratia marcescens* absence of chromosomal breaks in *Allium* roots or cultured human lymphocytes, and absence of dominant lethal mutation in mice after IP or oral administration. Further, there is evidence that EDB alkylates DNA but does not produce cross linking of DNA. This is consistent with the conclusion of relative specificity in the action of EDB on DNA. In other words, EDB tested positively in tests which weigh changes in DNA, not in tests which evaluate cross linking in the DNA. This suggests a metabolite of EDB is acting on the DNA rather than the EDB molecule itself.

Direct acting mutagens may also be metabolized *in vivo* to chemical species of greater mutagenic action. EDB is such a compound. Activation of metabolites is tested by adding liver enzyme preparation (referred to as "S9") to the Ames test system. A slight increase in the number of reversions was produced in the Ames system with TA1535, but the action was not dependent on the presence of the nucleotide energy source, NADPH, and was subsequently shown to be produced by soluble rather than membrane-bound enzymes. (Rannug, 1980) This observation sets EDB apart from other mutagens which are activated by S9. EDB was also "activated" to higher mutagenic activity by extracts of certain plants and by liver perfusion procedures which yielded highly mutagenic bile when EDB was added to the perfusion fluid. Thus the genotoxicity of EDB is complex. It is a direct acting mutagen and it is metabolized to one or more highly mutagenic compounds.

Van Bladeren et al. (1981) determined the relative effects of glutathione conjugation on the mutagenicity of a series of vicinal dihalogen compounds. They found that rat liver glutathion transferase activity towards EDB was relatively high compared to the other vicinal dihalogen strates tested. Thus, the glutathione conjugate is a predominant metabolite. The EDB-glutathione conjugate was highly mutagenic in the Ames test and in fact is much more mutagenic than EDB itself. This study shows that at least one of the metabolites of EDB, the glutathione conjugate, can increase the genotoxic potential of EDB. Further, since the distribution of EDB and GSH (glutathione) conjugate may differ *in vivo* it is possible that the target organs for the two mutagenic species may differ with one responsible for contact tumors and the other responsible for tumors in remote organs.

Elliott and Ashby (1980) used a mutagenic approach to show the synergistic response of EDB and disulfiram. Their observation is consistent with the increase in carcinogenic response seen in the rat study with disulfiram. This may suggest that specific precautions should be taken in cases where EDB exposures occur concurrently with other chemicals (e.g. pesticides) which act in the same manner as disulfiram.

Predicting the potential of a compound to induce mutagenic effects in humans is more difficult than predicting other types of toxicities, but the logic can still be founded on establishing the mechanism in appropriate non-human species. Valid studies demonstrating mutagenic effects in experimental animals, the mechanisms of those coupled with serious consideration of pharmacologic principles and biodistribution in humans, do establish the framework for presuming a mutagenic hazard to humans. OSHA therefore believes that the evidence of EDB's mutagenic potential in non-human species can be used to predict mutagenic potential for humans.

TABLE 1.—RESULTS OF THE NTP/NCI INHALATION BIOASSAY OF EDB IN FISHER 344 RATS—TUMOR INCIDENCE BY SITE

Tumor	Control	10 ppm	40 ppm
1. Nasal cavity:			
Adenocarcinoma (M)	0/50	***20/50	***28/50
Adenocarcinoma (F)	0/50	***20/50	***29/50
Carcinoma (M)	0/50	0/50	***21/50
Carcinoma (F)	0/50	0/50	***25/50
Adenomatous polyps (M)	0/50	***18/50	*5/50
Adenomatous polyps (F)	0/50	*5/50	*5/50
Adenomas (M)	0/50	***11/50	0/50
Adenomas (F)	0/50	***11/50	3/50
Squamous cell carcinoma (M)	0/50	3/50	3/50
Squamous cell carcinoma (F)	1/50	10/50	5/50
2. Lung:			
Alveolar/bronchiolar carcinomas or adenomas (F)	0/50	0/48	+5/47
3. Tunica vaginalis: Mesotheliomas (M)	1/80	**8/50	***25/50
4. Mammary fibroadenomas (F)	4/50	***29/50	***24/50
5. Circulatory system:			
Hemangiosarcomas (M)	0/50	1/50	***15/50
Hemangiosarcomas (F)	0/50	0/50	*5/50
6. Pituitary adenomas (M)	0/45	++7/48	2/47
Pituitary adenomas (F)	1/50	***16/49	4/45

***p=0.001. **p=0.015. *p=0.028.
++p=0.008. +p=0.024.

TABLE 2.—RESULTS OF NTP/NCI INHALATION BIOASSAY OF EDB IN B6C3FI MICE—TUMOR INCIDENCE BY SITE

Tumor	Control	10 ppm	40 ppm
1. Lung:			
Alveolar/bronchiolar adenoma or carcinoma (M)	0/41	3/48	***23/46
Alveolar/bronchiolar adenoma or carcinoma (F)	4/49	*11/49	***41/50
2. Circulatory system:			
Hhamangioma or hemangiosarcoma (M)	0/45	0/50	4/50
Hemangioma or hemangiosarcoma (F)	0/50	***12/50	***27/50
3. Subcutaneous tissue fibrosarcoma (F)	0/50	+ + 5/50	***11/50
4. Mammary gland adenocarcinoma (F)	2/50	***14/50	+ 8/50
5. Nasal cavity carcinoma or adenoma (F)	0/50	0/50	**6/50

***p=0.001. **p=0.003. *p=0.045.
++p=0.028. +p=0.046.

E. Conclusions

Based on the discussion of the scientific evidence presented here OSHA believes that EDB is a potent animal carcinogen. EDB produces tumors at the site of direct contact and at sites remote from the site of administration. EDB and two of the principle metabolites (bromoacetaldehyde and N-acetyl cysteine) are positive in the Ames Salmonella assay. They are also positive in other *in vitro* systems with and without activating enzymes.

Pharmacokinetic studies discussed in Brown's risk assessment show that EDB is rapidly absorbed, metabolized by liver mixed-function oxidase enzymes and excreted in the feces and/or urine. The biological half-life of EDB in animals is about 1 day.

Target site of "direct" tumors are dependent on route of exposures. Oral doses of 20 and 40 mg/kg/day produced forestomach tumors. Inhalation doses of 10 and 40 ppm 6 hours per day produced nasal cavity tumors. Doses of 15 mg/mouse/day produced nasal cavity tumors. Doses of 25 mg/mouse/day applied to the skin of mice produces skin papillomas and carcinomas.

Tumors are produced at tissue sites remote from the site of contact in each bioassay. These included respiratory tract (lung) tumors in mice in the skin painting study; hemangiosarcomas of the circulatory system in rats in the inhalation studies, and alveolar/bronchiolar carcinomas in the mice in the inhalation studies. In the oral gavage study, hemangiosarcomas were also produced in the circulatory system.

The tissues remote from the site of direct contact in which tumors were produced would have had relatively low exposures to EDB. They presumably responded because of unique pharmacokinetic, metabolic or other biochemical characteristics. These sites are therefore of concern with chronic low level exposures. Mode of action studies have demonstrated the presence of EDB or a metabolite covalently bound in tissues.

Increased incidences of cancer have not been demonstrated by epidemiology studies on workers exposed to EDB in the chemical industry. The studies are of limited value because small numbers of workers were studied, limited exposure information relative to EDB was available and exposures to a variety of other possibly toxic chemicals occurred. While the absence of tumors in the studies is noteable, the studies do not rule out the possibility of low level indices of cancer in the workers.

Reproductive effects of EDB in several animal species have been clearly established. EDB's action, specifically in early stages of sperm development, has been shown. Doses as low as 80 ppm produced reproductive toxicity in male rats. The teratology studies showed malformations at doses which produced maternal toxicity. Malformations and anomalies were produced in rats and mice. These included: Runts, skeletal anomalies such as an enlarged occipital, fontanel and ossification effects which are consistent with delayed development. Based on this, it was conclused the EDB is not a potent teratogen.

Epidemiology studies on the reproductive effects of EDB are equivocal. Only one of the groups showed a decrease in family size but the effects were not dose-related. Further, the reduction in sperm counts with EDB were not statistically significant. This study shows that EDB's effects on male reproduction were marginal, if present at all, at the levels of exposures in these workers.

OSHA believes that the total risk to the health of employees exposed to EDB is the result of the compounded risks from carcinogenicity, mutagenicity, spermatotoxicity, teratogenicity, and damage to the kidneys, liver, spleen, respiratory tract, central nervous system, circulatory system, skin and eyes.

Therefore, the totality of the adverse health effects associated with exposure to EDB warrant the reduction in the PEL to 0.10 parts per million.

IV. Quantitatative Risk Assessment for EDB

A. Introduction

Brown (Ex. 11) provided a succinct explanation of the rationale and basis for quantitative risk assessment. It is presented here as introduction.

There are several approaches to the estimation of risk to low exposures to airbone compounds. Mathematical models attempt to fit curves to data points observed at different exposure levels and from these curves to predict the risk at other, usually lower, exposures. These curves range from linear extrapolations to zero exposure and zero risk to curves which may deviate far from linearity at extreme doses. The use of a particular model or curve can be justified in part by statistical measure of "fit" to available data points. These considerations have been reviewed from the statistical standpoint. (Krewski and Van Ryzin, 1981).

In all cases it is assumed that the mathematical curves are reflective of biological processes that control the biological fate and action of the toxic compound. To date, these factors have not been quantitatively linked to the mathematical models. Biological factors which may play important roles in the risk assessment are (1) dose of the material at the sensitive tissue; (2) the sensitive tissue(s) itself; (3) the nature of the response(s); (4) rates and sites of biotransformation; (5) toxicity of metabolites; (6) chronicity of the compound (cumulative nature of the material or its actions); (7) pharmacokinetic distribution of the material (especially effects of dose on the distribution); (8) the effect of biological variables such as age, sex, species and strain of test animal; (9) and the manner and method of dosing the test animals.

It is clear that all of these factors cannot be easily incorporated into a single mathematical model. Therefore, selection of the data for evaluation in the model is an important factor in the risk assessment. In cases where several data sets are available, such as EDB, and the agent has a variety of actions, also true of EDB, the results of different approaches should provide a guide as to the optimal approach to risk assessment, and they should compare logically with each other (pg. 98–99).

In order to quantify the potential risk of cancer to workers exposed to ethylene dibromide, OSHA has reviewed several quantitative risk assessments submitted in response to the ANPR. Predictions based on both human data and extrapolations from other species, and several different mathematical approaches were considered.

OSHA and others examined several possible exposure scenarios for lifetime occupational exposure including TWA exposures ranging from 20 to 0.05 ppm. The following discussion gives a brief description of each of the risk assessments, summarizes the results

and offers OSHA's preliminary determination of the level of risk posed by exposure to EDB.

B. Terminology and Definitions

Several statistical/technical terms are defined here for reference in reading this section.

(1) *Mathematical model:* A well-defined mathematical equation describing the relationship between dose (e.g. parts per million of EDB) and response (e.g. number of tumor-bearing animals). The experimental data are used to define the relationship; that is, a curve is "fit" to the data.

(2) *Mathematical fit:* A term used to describe how close a predicted dose-response curve is to the actual observed points. Fit is often measured by a Chi-squared goodness-of-fit statistic and its corresponding P value. The closer the P value is to one, the better the fit.

(3) Several different mathematical models are discussed in this preamble. Most of the models are based on theories of cancer development, such as the onehit, the multistage, and the gamma multihit. The other models are usually applied to cancer studies but have also been used to predict risk for other actions of toxins.

a. Onehit model: This model assumes that the expected number of chemical-cell interactions is directly related to dose. The curve produced is linear in the low dose range. It can not take into account repair, detoxication reactions and metabolic activation.

b. Multistage model: This model assumes that the toxic response is the result of an ordered series of biological events and that the occurrence of each event is linearly related to the dose. [Note: The onehit model may be considered a special case of the multistage model, where there is simply one stage.]

c. Probit model: This is a typical sigmoid-shaped curve; strongest in the 5 to 95% response area. Zero responses are approached very rapidly as the dose decreases.

d. Logit model: This is also a sigmoid curve symmetric about the 50% response point. It approaches zero response more slowly than the probit model.

e. Weibull model: This is a generalization of the onehit model which allows for non-linear responses in the low dose region. The response may be concave or convex depending on estimates from the observed data sets.

f. Gamma Multihit model: This also assumes that an expected number of chemical-cell interactions is related to dose, but it further assumes that a number of responses is needed to produce the cellular response. Thus the model may fit data observed at higher doses better than the onehit model (Ex. 11, p. 100–102).

(4) *Extrapolation/interpolation:* Once a mathematical model is fit to a set of data points, one may wish to predict the risk at other points along the curve. Extrapolation is the prediction of risk outside the range of the observed data; interpolation is the prediction of risk within the range of the observed data. The term interspecies extrapolation refers to the prediction of risk in one species (e.g. man) based on observations in another species (e.g. rats).

C. Summary of Risk Assessments

OSHA prepared an in-house risk accessment (OSHA, 1981) based on the incidence of nasal cavity adenocarcinoma in the 1981 NCI inhalation bioassay in rats (Ex. 4–15). In the study, rats and mice were exposed to either 10 ppm or 40 ppm of EDB for 6 hours per day, 5 days per week for 78 to 103 weeks. In rats of both sexes, EDB induced cancer at both exposure levels, causing highly significant increases of nasal cavity adenocarcinomas as well as cancer at other sites. In mice of both sexes, EDB induced highly significant increases in lung cancer as well as cancer at other sites at the 40 ppm level. The incidence data used for this risk assessments given in Table 3. Though EDB has been shown to induce cancer in rats by several different routes of exposure (gavage, skin application, and inhalation) the NCI inhalation bioassay was chosen for the risk assessment since inhalation is the primary route of occupational exposure. This eliminates a potential source of uncertainty, the need to extrapolate from differing routes of exposure.

The OSHA in-house risk assessment also included a discussion of the impact of the choice of a scaling factor for dose. Doses are often scaled as a means of interspecies "standardization" in an attempt to account for interspecies variability in pharmacokinetic parameters (such as metabolism, absorption, distribution, as well as other factors that can affect the extrapolation process) (Hogan and Hoel, 1982).

In a table of dose equivalencies (OSHA, 1981, Table 4), conversion of animal doses to equivalent human exposure levels by adjusting for body surface area (mg/m^2) would increase the estimates of lifetime risk in humans by three to five fold (for a onehit model); adjusting for body weight (mg/kg) would decrease estimates of risk two to four fold at low exposures (for a onehit model). These effects would be more substantial with models of higher degree (quadratic, cubic, etc.). OSHA chose a scaling factor of one (i.e., ppm was an equivalent dose expression for rats and man) for two reasons: (1) Mathematically, the use of ppm as an expression of dose would produce median estimates of risk and (2) In a risk assessment based on nasal tumors, a contact tumor, dose expressed as air concentration (ppm) can reasonably be considered the effective dose (the dose actually causing an effect). OSHA's choice of ppm (i.e, a scaling factor of one) for nasal tumor risk extrapolation is supported by Busch of NIOSH (Memorandum to Director, 1982) and Brown (Ex. 11).

Data for each species were fit to two different mathematical models: the onehit model and the multistage model. These models were chosen because of their biological plausibility in describing chemical carcinogenesis. Both models assume no threshold, that is, that there is no demonstrated safe level of exposure. For the prediction of risk, it is further assumed that workers are exposed to a given level of EDB for 8 hours per day, 5 days per week, 46 weeks per year, for 45 years during a 54 year working lifespan.

Using the nasal tumor data, the in-house OSHA quantitative risk assessment predicted a range of 160 to 437 excess cancer deaths per 1000 workers at 20 ppm and 0.06 to 3 excess deaths per 1000 at 0.1 ppm (100 ppb).[3] These estimates were maximum likelihood estimates. 95% upper confidence limits on thse estimates range from 251 to 516 excess deaths per 1000 at 20 ppm and 1.4 to 3.6 excess deaths per 1000 at 0.1 ppm (100 ppb) (Addendum, OSHA, 1981).

The EPA Carcinogen Assessment Group (CAG) reported an "Updated Quantitative Risk Assessment for Ethylene Dibromide" in 1979 which was updated in May 1980. The analysis predicts risk for dietary exposure from consumption of fumigated foods and crops grown in fumigated soil and occupational inhalation exposure.

For the latter risk assessment, the group employed preliminary data from the MRI/NIOSH inhalation study of ethylene dibromide and disulfiram (a note in the risk assessment states the pathological data was final; therefore the data would be the same as that found in Ex. 4–18). When Sprague-Dawley rats were exposed to EDB alone, statistically significant increases in spleen hemangiosarcomas and adrenal tumors were observed in male and female rats and a significant increase in

[3] A range of estimates over both species and both the onehit and multistage models.

mammary tumors was observed in the female rats. The tumor incidence data for the three types of tumors in the female rat and dose (expressed as mg/kg/day) were used to estimate the lifetime probability of cancer in humans. Tables of the incidence data employed in the risk assessment were not provided.

The CAG employed a one-hit model, adjusting for a 40 year work history and 71.3 year lifespan. This exposure scenario is slightly different from that usually employed by OSHA: 230 days per year for 45 years in a 54 year working lifespan in a 74 year lifespan. Using the CAG potency parameter (the unit risk per unit does, or slope of the curve) determined from the model, the excess probability of death from lifetime inhalation exposure to EDB at 20 ppm (7.95 mg/kg/day) is 999 deaths per 1000 workers, and 45 per 1000 workers at 0.1 ppm (100 ppb). In addition, the CAG risk assessment also included upper bounds risks due to ingestion of crops grown in soil fumigated with EDB, and foodstuffs fumigated with EDB. Though it is not the major source of occupational exposure, ingestion of fumigated foodstuff does pose some occupational risk.

The GAG commented on the suitability of the data for risk assessment. It endorsed these estimates of risk over previously derived estimates since "This [MRI/NIOSH] report allows us [CAG] to make a direct estimate of the carcinogenic effect of inhaled EDB" (p. 5).

Lastly, the CAG risk assessment also observed that the MRI/NIOSH report demonstrated that the carcinogenic effects of EDB were "considerably enhanced" when rats were exposed to disulfiram in addition to the EDB. The group estimated the potency of the combined exposure to be approximately 85 times that with EDB alone, indicating the potential for a highly synergistic effect with EDB. This concern for the potentiation of the toxic effects of drugs and chemcials like disulfiram is echoed in the NIOSH CIB (Ex. 4–6).

In an earlier (1978) risk assessment (Carcinogen Assessment Group 1978), CAG estimated risks due to occupational inhalation based on the negative epidemiology study reported by Ott et al. (1977). As was noted earlier, the results of the study must be examined carefully due to small sample size (and thus low statistical power) and mixed exposures. Using the methodology recommended by CAG in this risk assessment, OSHA estimated a 95% upper bound for the lifetime risk from exposure to EDB at 20 ppm to be 999 deaths per 1000 workers and 67 deaths per 1000 at 0.1 ppm (100 ppb).

Despite the limitations in the study results, the striking similarity of risk estimates produced from analysis of this human data extrapolation to the estimates based on the rodent inhalation study should be noted.

An even earlier CAG risk assessment (Memorandum to Edwin Johnson, September, 1977) was based on the NCI intubation study (Ex. 4–17). The risk assessment predicted a potency coefficient (slope) 16 times greater than that from the rat inhalation study. This risk assessment is reviewed in the 1979 CAG risk assessment.

SRI International (1982) performed a quantitative risk assessment (for NIOSH) based on the nasal tumors found in two inhalation studies in male rats, and males and female rats (NCI-NTP, 1981, Ex. 7–9, MRI/NIOSH, 1980, Ex. 7–4). By combining study results, there were data points for a control and three non-zero dose levels (10, 20 and 40 ppm) which were used for the risk assessment. Dose in ppm were scaled to mg/kg/day for the risk assessment and the data were fit to the gamma multihit and the multistage models. Predictions were made for workers both at rest and under working conditions.

SRI estimated the lifetime human cancer risk from exposure (working conditions) to EDB at 20 ppm to be 1.00 by the multistage model and .99 by the gamma multihit model (virtually 1000 cancer deaths per 1000 workers). Using the slopes and scaling factors provided in the risk assessment the risk at 0.10 ppm (100 ppb) as 117 excess deaths per 1000 (multistage model). Calculations based on other combinations of the data produced similar results.

TABLE 3.—SPECIFIC CANCER INCIDENCE IN RATS AND MICE

Species and sex	Exposure level (ppm)	Animals with tumors/animals examined
Rats		
Male	0	[1] 0/50
	10	*20/50
	40	*28/50
Female	0	0/50
	10	*20/50
	40	*29/50
Mice		
Male	0	[2] 0/41
	10	*3/48
	40	*19/48
Female	0	1/49
	10	**5/49
	40	*37/50

*P=0.001[3] **P=0.1523. ***P=1.1021.

[1] Nasal cavity adenocarcinoma/animals examined.
[2] Alveolar bronchiolar carcinoma/animals examined.
[3] P values are given for one-tail (upper tail) probabilities from Fisher's Exact Test.

In an interagency review of OSHA's in-house risk assessment, Busch of NIOSH outlined the major issues and uncertainties involved in all quantitative risk assessment (Memorandum to Director, 1982). In particular, he addressed the two main sources of error in such predictions: intraspecies extrapolation and interspecies extrapolations.

Busch criticized the OSHA risk assessment for not including confidence limits to account for variability in the test animals (intraspecies extrapolation). In response to this, OSHA has included and addendum to its in-house risk assessment which provides the 95% upper confidence limits on its estimates (OSHA, 1981).

Busch also included an analysis of the scaling of the dose parameter (interspecies extrapolation). He concluded (as had OSHA) that expressing dose in parts per million (ppm) or a scaling factor of one was the "best choice" for the nasal tumor data.

In addition, Busch discussed the use of the onehit and multistage models in providing "conservative" estimates of risk. (A conservative estimate is defined as an estimate which will tend not to underestimate the risk.) Busch pointed out that while the onehit and multistage models produced conservative (too high) estimates of risk at low doses, they actually *underestimate* the risk posed at levels which fall within the range of doses of the experimental animals, such as 20 ppm. Busch used a probit model to perform an alternative interpolation at 20 ppm EDB because he felt the convex-upwards shape of the probit model would probably be more accurate in the midrange than the linear or concave-upward multistage model. He added: "The onehit model is obviously not credible for use in the midrange" (p. 10). The risk estimates derived from the probit model exceed the OSHA in-house risk estimates at 20 ppm by 12% to 28%. Busch concluded:

> Based on a 45-year period of intermittent exposure (during 8-hour workshifts) to 20 ppm EDB, the risk (probability) that a worker will develop the most common form of cancer is estimated to be between 38% and 59%. This range is obtained from 95% two-sided confidence limits for risks to male and female rats. [There are indications] * * * that the risk estimates for rats exposed to 20 ppm EDB are probably underestimates of risks to humans at the same exposure concentration.

A detailed and informative risk assessment was performed by Brown under contract to OSHA (Ex. 11). He examined the mode of toxicity of EDB as a prelude to quantitatively estimating the cancer risk associated with occupational exposure.

Brown noted two types of tumors associated with EDB exposure—site of contact tumors and remote tumors. The target site of "direct" tumors was dependent on route of exposure. Oral doses of 20 and 40 mg/kg/day produced forestomach tumors (Ex. 4–17). Inhalation doses of 10 and 40 ppm 6 hours per day produced nasal cavity tumors (Ex. 4–15). Doses of 25 mg/mouse/day applied to the skin of mice produced skin papillomas and carcinomas (Ex. 4–19).

In addition, tumors were produced at tissue sites remote from the site of contact in each bioassay. These included respiratory tract (lung) tumors in mice in the skin painting study (Ex. 4–19); hemangiosarcomas of the circulatory system in rats in the inhalation studies (Ex. 4–15, 4–18), and alveolar/bronchiolar carcinomas in the inhalation studies in the mice (Ex. 4–15). In the oral gavage study, hemangiosarcomas were also produced in the circulatory system (Ex. 4–17).

The tissues remote from the site of direct contact in which tumors were produced would have had relatively low exposures to EDB (that is, the effective dose may be different than the administered dose). They presumably responded because of unique pharmacokinetic, metabolic or other biochemical factors. Since these remote site tumors may be of particular concern with chronic low level exposures (due to metabolite-EDB interaction), Brown recommended that risk to workers be based on the incidence of hemangiosarcomas in male rats; he suggested that a risk assessment based on nasal tumors may provide a "more conservative" alternative.

In making his quantitative estimates of risk, Brown relied on the following assumptions:

(1) Rats and mice can be used to predict the quantitative risk of human cancer, male reproductive injury and acute toxicity resulting in man from exposure to EDB. [Note: The quantitative risk assessment was based solely on cancer. Though there were dose-response relationships demonstrated for several reproductive effects in a variety of species, many of the endpoints (reduced egg production in hens, reduced average litter size in rats) maybe inappropriate for quantitative risk assessment for humans].

(2) Cancer and other health risks at low doses are proportionally lower than risks at high doses. The low-dose extrapolation can be accomplished by fitting a mathematical dose-response model to the experimental data.

(3) Since the primary route of exposures in workers is inhalation, data from inhalation studies may be more applicable to hazard assessment for workers than data from oral or dermal routes of exposure, although significant actions are produced by skin contact.

(4) Both EDB and its major metabolites contribute to the human carcinogenic risk. The relationship between dose level of the exposure, the dose absorbed, and the risk of specific tumors differs for direct contact tumors and tumors remote from the site of contact.

(5) The exposure level and dose on a mg/kg body weight basis will possibly affect the relative amount of each metabolite(s) formed and the site of action of EDB.

(6) The human epidemiology studies available are insufficient for quantitative risk assumptions but are useful for verifying predictions developed from models based on the animal data.

Justification for these assumptions is detailed in Brown's report. Assumptions 1–3 and 6 were also made by OSHA in its in-house risk assessment; since the OSHA in-house risk assessment was based on nasal (site of contact) tumors however, assumptions (4) and (5) were not applicable.

In an effort to make maximal utilization of the available information, Brown chose to combine the results of two inhalation studies in rats in order to estimate the risk to workers, as was done in the SRI risk assessment. Data on specific tumors (i.e., nasal tumors or hemangiosarcomas) from different sutdies were combined when it was felt that they resulted from similar biological mechanisms. The integrity of this procedure was borne out by the comparison of predictions using combined data with those from risk assessments based on other data sets, particularly estimates based on single data sets from single experiments. Brown's preferred estimates were based on the combined data from the NCI/NTP and MRI/NIOSH inhalation bioassays.

Brown scaled the dose for risk assessment based on the remote tumors (hemangiosarcomas) in mg/kg/body weight. However the risk estimates based on nasal tumors used dose in terms of ppm (a scaling factor of one) since he believed that when "tumors are to a high degree the result of a direct action (Alkylation) by EDB, then the absolute concentration reaching the issue would be a more important parameter than the dose to the animal on a body weight basis." (p. 108).

Where possible, Brown fit six different models (onehit, multistage, probit, logit, gamma multihit and Weibul) to the data. His preferred estimates were those from the onehit model using nasal tumor data and the onehit and multistage models when using hemangiosarcoma data.

Based on the hemangiosarcoma data (Ex. 4–15, 4–18), Brown predicted a risk of 70 to 10 excess cancer deaths per 1000 workers at 20 ppm with 95% upper confidence limits of 134 to 148 excess deaths per 1000; at the proposed OSHA PEL of 0.1 ppm (100 ppb), he predicted an excess risk of 0.2 to 0.6 excess deaths per 1000 (95% confidence limits are .7 and .8 excess deaths per 1000). Again, using the inhalation studies, estimates of risk based on nasal tumor incidence (and air concentration of EDB—ppm) were 725 excess deaths per 1000 workers at 20 ppm and 6 excess deaths per 1000 at 0.1 ppm, with 95% upper confidence limits of 785 (at 20 ppm) and 8 (at 0.1 ppm) excess deaths per 1000.

Another risk assessment demonstrating the risk associated with EDB was given in the "Proposed Emergency Standard for Ethylene Dibromide" for the State of California (Ex. 4–9, Appendix G). This quantitative assessment of risk utilized data from the NCI inhalation bioassay. Though data from the NCI gavage bioassay are discussed in the submission, the estimates of lifetime cancer risk were based on data from the inhalation bioassay "since this route of exposure is similar to what may be the major source of human exposure" (pg. 93). The data used in the CAL/OSHA risk estimates is the nasal tumor data employed in the OSHA in-house risk assessment (OSHA, 1981) given in Table 3. This risk assessment used a mg/kg/day dose-equivalency with a daily lifetime occupational exposure of 1 ppm equivalent to 0.32 mg/kg/day. Using a simple linear model, the CAL/OSHA risk assessment predicts a lifetime risk of cancer from occupational exposure to EDB as 400 per 1000 at 20 ppm and 2 per 1000 at 0.1 ppm (100 ppb); using the onehit model the risk is greater than 996 per 1000 from exposure at 20 ppm and 0.5 per 1000 at 0.1 ppm (100 ppb).

D. Discussion and Conclusions

A summary of results from each of these quantitative risk assessments is given in Table 4. Taken together, they establish that there is a large excess risk of cancer death from exposure to EDB at 20 ppm and that lowering the PEL to 0.1 ppm will greatly reduce that risk.

Estimates of the excess risk at 20 ppm ranges from 70 to 999 per 1000 and depend heavily on the model used and the choise of tumor data upon which the quantitative risk assessment is based. After examining these (eight) risk

assessments, OSHA endorses Brown's approach to the quantitative assessment of risk from exposure to EDB. OSHA concludes that

TABLE 4.—ESTIMATES OF LIFETIME EXCESS CANCER RISK FROM EXPOSURE TO ETHYLENE DIBROMIDE

Risk assessment	Excess deaths per 1,000 (95 pct upper confidence limits)		Model
	20 PPM	0.1 PPM	
EPA CAG:			
1978	999	67	"Upper bound" on onehit.
1980	999	45	Onehit.
SRI	990-1000	117	Multihit, onehit.
OSHA In-House	160-437(251-516)	0.06-3(1.4-3.6)	Onehit, multistage.
Busch	190-490(293-588)		Probit.
Brown:			
Hemangiosarcomas	70-110(134-148)	0.2-0.8(0.7-0.8)	Onehit, multistage.
Nasal Tumors	725(785)	6 (8)	Onehit.
CAL/OSHA	400-900	0.5-2	Onehit, linear.

Brown's risk estimates which incorporate the combined hemangiosarcoma data and the combined nasal tumor data are to be relied upon in making its preliminary determination of risk. Thus, at this time, OSHA concludes that the lifetime estimate of risk from (lifetime) occupational exposure to EDB at 20 ppm is 70 to 110 excess deaths per 1000 (95% upper confidence limits of 134 to 148 excess deaths per 1000); the predicted risk at 0.1 ppm (100 ppb) is therefore 2 to 6 per 10,000 with 95% upper confidence limits of 7 and 8 per 10,000. The estimate of 725 excess deaths per 1000 based on the nasal tumors is considered a valid but conservative estimate of risk. The rationale for these conclusions is given below.

OSHA believes that the multistage model (and the onehit model as a special case) is the most appropriate model for the prediction of excess risk from exposure to EDB. The curve shows good fit to the observed data and was employed in almost all the quantitative risk assessments submitted to the record.

Busch's (NIOSH) contention that the nonsigmoid curves tend to underestimate the risk in midrange is not borne out by Brown's data. Estimates from the sigmoid curves at 20 and 10 ppm are almost identical to those calculated for the onehit and multistage models (71 per 1000 for the probit model). This could be a result of the different tumor data used by Brown (hemangiosarcomas) or the increase in degrees of freedom gained in the combination of data sets. The "conservatism" of onehit and multistage models at low doses is still evident with this data (probit estimate is 5.0×10^{-8} per 1000 at 0.1 ppm).

The choice of the hemangiosarcoma data for the risk assessment was particularly prudent. Hemangiosarcomas were observed in all of the bioassays. The bioassays indicate that, regardless of route of exposure (inhalation, oral gavage, skin painting), the spleen and the circulatory system are specific target organs for the action of EDB and its metabolites. EDB is absorbed across biological membranes and found in circulating blood as EDB. This, EDB is available to all perfused tissues (essentially all tissues).

As Brown pointed out, "The tissues remote from the site of direct contact in which tumors were produced would have had relatively low exposures to EDB. They presumably responded because of unique pharmacokinetic, metabolic or other biochemical factors . . . These remote site tumors may be of particular concern with cronic low level exposures [due to metabolite-EDB interaction]" (Ex. 11, p. 94).

In addition, OSHA recognizes the advantage of combining data sets of similar tumors for risk assessment as was done by SRI (1982) and Brown (Ex. 11). Not only do similar results from different studies strengthen the weight of evidence of carcinogenicity, but the combination of these data into a single prediction of risk is resonable and provides a wider data base (more degrees of freedom) from which to make the prediction of risk.

The choice of a dose scaling factor for calculating equivalent doses was mixed among the submissions. The CAG, SRI, and CAL/OSHA assessments employed a factor to convert to mg/kg/day for risk assessment based on the inhalation bioassays and nasal tumor data. OSHA, Busch (NIOSH) and Brown employed ppm (scaling factors of 1) for these analyses, Brown recommending use of mg/kg/day only for the systemic (non-contact) tumors. OSHA concurs with this approach. The use of a mg/body weight scaling factor adjusts in some way for differences in biological mechanisms between species and seems to be a more accurate characterization of dose for remote site tumors. As Brown notes, use of actual concentration seems reasonable in a risk assessment based on contact tumors.

The excess cancer risk to workers exposed to EDB with high intermittency has not been quantified in this risk assessment. The models employed by OSHA and others assumed a cumulative dose-risk relationship. Moreover, risk estimates were based on results of cronic exposure bioassays.

In most industrial settings and other work environments, employee exposures to harmful substances are regular and long term in nature. Based upon the limited data presently available, OHSA believes that the exposure pattern for many EDB-exposed employees may follow a different pattern and that a substantial number of employees may be exposed to EDB on a somewhat irregular or intermittent basis. The models relied upon by OSHA and others to estimate the risk from occupational exposure to EDB assume regular long-term exposure. Similarly, the risk estimates were based on the results of *chronic* exposure bioassays. Therefore, the risk estimates discussed herein may only be imprecisely related to the portion of the population which is exposed to EDB on a less than regular basis and may not offer a fully representative description of these workers' risk.

A wide variety of factors makes it difficult to account for these highly intermittent exposure patterns in a quantitative manner. There is no widely accepted risk model presently in use which provides the opportunity to consider the effects of intermittent exposures or periods of non-dosing. While it is possible to adjust the mathematical models to reflect a decrease in total exposure time (which by definition is always present with highly intermittent exposures), the mathematical models cannot evaluate or predict the range of boiological interference which may take place between exposures. On the one hand, there may be elimination or deactivation of EDB to some extent when it is introduced into the system in small quantities at infrequent intervals. Such a highly intermittent exposure pattern may, at least theoretically, allow for the repair of damaged systems or cells. Both of the factors then may result in a greater reduction of risk than a model simply adjusted for decreased exposure time might reflect. On the other hand, very little deactivation or repair may

occur in spite of relately sporadic exposures.

The impact of intermittent or sporadic exposures to EDB is particularly difficult to weigh because of the lack of precise knowledge of the biological mechanism of carcinogenesis EDB has been shown to cause cancer in test animals by every route of exposure; tumors have been produced at the site of contact as well as remote sites. Experimental evidence shows that EDB forms various metabolites once it is introduced into the system; some of these metabolites are active mutagens. Moreover, EDB and its metabolites are potent alkylating agents; alkylation of macromolecules has been identified as the primary step in toxic injury to the cell in the case of reactive molecules. Consequently it may be inappropriate to assume that repair or detoixification play a significant role in spite of intermittent exposure.

Moreover, the only scientific evidence specific to EDB which is presently available suggests that the risk of cancer is not significantly reduced in spite of an intermittent dosing pattern. In the NCI oral gavage study test animals were subjected to 13 weeks at high doses followed by approximately 71 weeks at a lower dose on a cyclic basis (the animals were exposed for 4 weeks and rested for 1 week). Although the animal exposures in this study could be described as intermittent, the test animals developed cancers in the same order of magnitude as in other studies where the animals were subjected to regular exposures. Consequently, any repair or deactivation that does occur may be extremely dependent on the spacing of the doses and there is no reason to believe that in the case of EDB exposure there is a linear relationship between the repair mechanism and dose.

Another factor to be considered is that EDB is a proven synergistic agent. In view of the fact that EDB may act in a synergistic manner with other substances to which the worker is exposed, the potential effect that intermittent exposures to EDB may have on the biological system must be taken into account. This factor is especially important since workers are often exposed to other carcinogens in the work environment as well. (For example, grain elevator workers who may be intermittently exposed to EDB are sometimes also exposed to carbon tetrachloride, a well-documented carcinogen). Consequently there may be no reduction of the risks or there may be an actual increase in risk even though the EDB exposures are intermittent.

Based upon its present knowledge, OSHA feels that its ability to quantify the risks of intermittent exposure to EDB is limited. That is, limitations in the available data and science are such that a quantifiable extrapolation of risk for intermittent exposure to EDB is not possible at this time. OSHA requests information and data specifically addressing the question of intermittency; in particular, information is needed on the appropriate modeling and the prediction of risks due to intermittent exposure at high and low exposure levels.

OSHA predicts that the increase in lifetime cancer risks attributable to exposure to EDB at the current PEL is 7 to 11%, with possible upper limits as high as 79%. OSHA believes that such risks warrant and compel a new standard (and lower PEL) for occupational exposure to EDB. The impact of these estimates of risk and their role in setting the new PEL is discussed in the following section.

V. Significance of Risk

OSHA's overall analytic approach for setting worker health standards is a four step process consistent with recent court interpretations of the OSH Act and rational, objective policy formulation. In the first step, quantitative risk assessments are performed where possible and considered with other relevant factors to determine whether the substance to be regulated poses a significant risk to workers. In the second step, OSHA considers which, if any, of the proposed standards being considered for the substance will substantially reduce the risk. In the third step, OSHA looks at the best available data to set the most protective exposure limit that is both technologically and economically feasible. In the fourth and final step, OSHA considers the most cost-effective way to achieve the objective.

In the Benzene decision, the Supreme Court indicated when a reasonable person might consider the risk significant and take steps to decrease it. The Court stated:

> It is the Agency's responsibility to determine in the first instance what it considers to be a "significant" risk. Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal a reasonable person might well consider the risk significant and take the appropriate steps to decrease or eliminate it. (*I.U.D.* v. *A.P.I.*, 448 U.S. at 655).

The Court indicated, however, that the significant risk determination required by the OSH Act is "not a mathematical straightjacket," and that "OSH is not required to support its findings with anything approaching scientific certainty." The Court ruled that "a reviewing court [is] to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge [and that] * * * the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of overprotection rather than underprotection," 448 U.S. at 655, 656.

As indicated in the health effects section above, EDB is an extremely potent carcinogen in animals, causing cancer by all routes of exposure, both at the site of contact and at remote sites.

In the preamble to this proposed standard, OSHA has presented data establishing a dose response relationship with regard to cancer in experimental animals as well as hepatic necrosis, toxic nephropathy and reproductive toxicity including embryo toxicity. Mutagenic effects have also been established. In order to determine whether the risk from exposure to EDB is "significant" the agency examined the risk from cancer from such exposure. No quantification of risks based on the numerous other adverse health effects associated with EDB exposure was attemped. Virtually all of the risk assessments performed (see discussion below) demonstrate that the risk of cancer from EDB is so high at such low levels of exposure that any further quantitative inquiry is rendered superfluous. However, OSHA believes that experimental data yields sufficient qualitative evidence to support the conclusion that EDB is a direct acting mutagen which also metabolizes to one or more highly mutagenic compounds. In addition, laboratory evidence suggests that EDB or an alkylating metabolite of EDB is responsible for the adverse reproductive effects observed.

As discussed in detail earlier, OSHA has based its risk estimates on a quantitative risk assessment for EDB performed by David Brown of Northeastern University (Ex. 11). Brown based his risk assessment on the inhalation studies conducted by the National cancer Institute/National Toxicology Program (NCI/NTP) and NIOSH/Midwest Research Institute (NIOSH/MRI). Brown's risk assessment predicted a risk of 70 to 110 excess cancer deaths per 1000 workers exposed at the current permissible exposure level (20 ppm) based on the hemangiosarcoma data combined from both studies. Estimates of risk based on nasal tumor incidence were 725 excess deaths per 1000 workers exposed at 20 ppm. These risk estimates assume employees have

regular exposure to the EDB over their working lifetime (45 years).

These estimates of risk for exposure to EDB at the current exposure limit greatly exceed the one per thousand guideline which the Supreme Court has characterized in the benzene case as presenting a significant risk. If workers are exposed for less than a working lifetime, as may be the case for citurs workers, the risk might be somewhat reduced. However, at this point, OSHA does not know how to quantify any possible reduction of risk (see discussion below). Public input is requested on this issue. It should be noted, however, that the laboratory evidence indicates that the risk to workers exposed at the present permissible exposure level of 20 ppm is so great that even if a scientifically valid methodology could be developed to account for intermittency, which might result in reducing the lifetime risk estimates for certain segments of the population, perhaps even by a factor of 2 or 3, risk would nevertheless still greatly exceed the one per thousand which the Supreme Court gave as an example of a significant risk *(I.U.D.* v. *A.P.I.,* 448 U.S. at 655).

Moreover, at least in the case of nasal tumor, the risks from EDB exposure appear to be far greater (725 per 1000) than for any other hazard that OSHA has regulated in the past, where the risks have been quantified. In the arsenic regulation, for example, the risk of cancer at the former permissible exposure level was estimated to be 400 per 1000, (see supplemental statement of reasons, 48 FR 1901), which was found to be significant. In addition, OSHA's preliminary risk assessment (which concurs with Brown's) indicates that the risk of cancer from EDB exposure at the permissible exposure level (using the combined hemangiosarcoma data) is at least as high (70 to 110 per 1000) as risks from other hazards to which OSHA has responded in those cases where quantification has been attempted. For example, the risk of cancer (using the combined hemangiosarcoma data) from EDB exposure is comaparable to the risk of cancer from ethylene oxide exposure, estimated at 63 to 109 per 1000, which OSHA preliminarily found to be significant in its recently proposed ehtylene oxide standard (48 FR 17295) and to the risk of byssinosis from cotton dust exposure of approximately 83 per 1000. Further, the risk from exposure to the current permissible exposure limit for EDB is much greater than the risk to coke oven workers (approximately 10 per 1000) which the Agency determined was sufficient to justify lowering the permissible exposure limit.

OSHA also evaluated the extent to which the risk would be reduced by adopting the proposed permissible exposure limit of 0.1 ppm. Assuming exposure over a working lifetime, the risk estimates made from the combined hemangiosarcoma data indicate risk would be reduced from 70 to 110 excess deaths per 1000 at the crrent premissible exposure limit to 2 to 6 excess deaths per 10,000 at the exposure limit contemplated in the proposed standards, approximately a 94.5% reduction in risk. If the risk estimates predicted from the nasal tumor data are used, the risk would be reduced from 725 excess deaths per 1000 at the current permissible exposure limit to 6 per thousand at the proposed permissible exposure level, indicating a 99% reduction in risk. Therefore, it appears that the excess deaths from cancer will be substantially reduced if the proposed permissible exposure level is adopted.

OSHA used the onehit and mulistage models to determine risk at both the current and proposed EDB permissible exposure limits and concluded that the multistage model was the most appropriate in this instance. It should be noted that estimates calculated using the onehit model were either the same or higher than those generated by the multistage model primarily relied upon by OSHA. Brown also calculated risk using other models, including the probit, logit, Weibull and gamma models where there were enough data points for these models to be used. Using the combinded inhalation study data, these various models estimated excess risks at the current permissible exposure limit which were essentially consistent with those generated by the multistage model; excess risk estimates generated by the other models (probit, logit, Weibull and gamma) at the proposed permissible exposure limit were somewhat lower that those calculated by the multistage model (Ex. 11, pp. 111–120). In any event, *all* models indicate an extremely high excess risk at the current permissible exposure limit and a dramatically reduced risk at the proposed permissible exposure limit. This corroborates OSHA's finding that there is a significant risk from exposure to EDB at the permissible exposure limit which will be significantly reduced by adopting the proposed permissible exposure limit and other proposed provisions designed to reduce worker exposure to EDB.

OSHA's risk assessment projects that a maximum likehood estimate of risk of 2 to 6 cancer cases per 10,000 workers will occur from regular occupational exposure at 0.1 ppm over a working lifetime. The upper confidence limit of this assessment is 7 to 8 cases per 10,000 workers. A more conservative estimate based upon the nasal tumor data indicates that at the proposed permissible exposure limit there will be 6 cancer cases per 1000 workers (with an upper confidence limit of 8 per 1000).

OSHA's preliminary conclusion is that risk is not eliminated at 0.1 ppm PEL. While the risk at this level ranges from approximately .2 to 6 cancers per thousand workers depending upon which laboratory results (tumor types) are relied upon, it is not necessary to determine which is the best estimate. Neither estimate reduces the risk to the point of insignificance. The proposed permissible exposure limit is based upon feasibility considerations. In other words, after evaluating all of the information which is presently available to it, the agency believes that it is feasible for employers to reduce employee exposures to EDB to 0.1 ppm and it may not be feasible to reduce exposure below 0.1 ppm.

Congress passed the Occupational Safety and Health Act of 1970 because of a determination that occupational safety and health risks were too high. Based on this, it is clear that Congress gave OSHA authority to reduce risks of average or above average magnitude when feasible. OSHA believes that the proposed standard for EDB will reduce the very significant risk from exposure to EDB to between .2 to 6 per 1000. Therefore, the Agency is carring out the congressional mandate within the limits of feasibility and is not attempting to reduce insignificant risks.

Under both the Congressional intent and the Supreme Court rationale, OSHA must, if it is feasible, seek to reduce risks below those estimated by the risk assessment to persist at a PEL of 0.1 ppm. The proposed rule as drafted may be expected to reduce the risks of EDB exposure below those estimated using the mathematical models because the estimates of risk only consider the PEL and do not take into account other protective clothing and work practices. As OSHA's assessment of the risk incorporated only the estimates from the inhalation of EDB, OSHA believes that these other protective provisions may lead to further reductions in risk by controlling exposures by other routes, namely dermal exposure and ingestion. OSHA believes that exposures by these other routes may contribute substantial additional risk to workers. However, the decrease in risk that may be achieved by these additional worker protection

provisions has not been quantified beyond a determination that they will add to the protection provided by a lower PEL. OSHA believes that employers who fulfill the provisions of the standard as proposed will provide protecion for their employees from the hazards presented by occupational exposure to EDB well beyond those which would be indicated solely by the reduction of the PEL.

In determining the level to which the permissible exposure limit should be lowered, several alternative 8-hour TWA's (1, 0.5, 0.1 ppm) were considered by the Agency. OSHA currently believes that compliance with a 0.1 ppm TWA is technologically and economically feasible based on data discussed elsewhere in this document and the Regulatory Analysis.

As discussed above, there may be a large segment of the exposed population that is exposed to EDB only intermittently. This pattern of exposure appears to be most likely for citrus workers as well as those in flour mills and grain elevators. In such cases, the risk of exposure to EDB may be somewhat lower than that predicted by the various risk assessment which assume regular exposure over a working lifetime. At this point, however, OSHA is unable to quantify with any degree of confidence any possible reduction of risk as a result of intermittent exposures.

The Agency believes that it may be possible to describe the risk posed by intermittent exposures in a more quantitative manner. Therefore, the risk estimating methodology employed as well as the rationale for the reliance upon specific data and assumptions is described in some detail (see Quantitative Risk Assessment discussion of the preamble) and advice is solicited from the scientific community on how to refine the technique to account for highly sporadic as well as seasonal exposure patterns.

As noted above in the quantitative risk assessment discussion, the Agency is mindful of the fact that there may be considerably more involved in accounting for intermittency than merly adjusting the total dose considered in the various risk assessment models. Therefore, OSHA invites comments addressing the issue of whether there are scientifically valid and and well-accepted techniques for accounting for intermittency in the extrapolation from laboratory data to man when the laboratory studies themselves are based upon chronic and not intermittent exposure.

In spite of these considerations, the Agency believes that the risk assessment relied upon in this proposal represents the best quantification of risk available at this time. Moreover a number of nonquantitative factors lead OSHA to believe that in spite of the intermittent exposure patterns of certain segments of the exposed population, the risk from these exposures may be close to that described in the risk assessment.

It should be noted that the NCI oral gavage study, the only laboratory study which may be analogous to intermittent exposures, showed cancers in the same order of magnitude as other studies that approximated regular exposures. In addition, dermal exposure may make a significant but unquantifiable contribution to the total EDB exposure of some industry segments such as citrus handling, where the exposure to airborne EDB may be characterized as seasonal. Although these dermal exposures are not taken into account in any of the risk assessments, the possibility of dermal exposure even when there are no spashes or spills of EDB cannot be discounted. For example, tests of fumigated citrus in Texas revealed a residual layer of EDB on the surface of the fruit of approximately 4.5 ug 14 hours after fumigation; this level was substantially reduced to 0.8 ug 40 hours after fumigation (OSHA Technical Submission #3).

The extreme toxicity of EDB is underscored by the laboratory results. EDB and two of its principal metabolites have been shown to be positive mutagens. Various types of tumors were produced at tissue sites remote from the site of contact in each bioassay. These included respiratory tract tumors, hemangiosarcomas of the circulatory system and alveolar/bronchiolar carcinomas. In addition, contact site tumors were induced in the forestomach and nasal areas. Adverse reproductive effects of EDB in several animal species have been clearly established. These adverse effects include interference in the early stages of sperm development and reduction of sperm count; malformation and anomalies in offspring were also produced. Moreover, there is an indication that some reproductive effects may be based on short term peaks, totally unrelated to length of exposure (Ex. 11).

OSHA believes that the total risk to employees exposed to EDB is the result of the compounded risks from carcinogenicity, mutagenicity, spermatotoxicity and damage to the kidneys, liver, spleen, respiratory tract, central nervous system, skin and eyes described in laboratory studies. All of these things together lend qualitive support to OSHA's quantitative risk assessment for those exposed continuously on a daily basis as well as for those exposed on an intermittent or seasonal basis.

The Agency believes that while the proposed PEL may be conservative for some industry segments who are not exposed to EDB on a regular basis, OSHA concludes that based upon current knowledge there is support for the proposal which applies the proposed PEL of 0.1 ppm to all covered employees regardless of their exposure pattern. This is especially true in view of the fact that the Agency has limited knowledge as to the precise exposure profile within various segments of the industry. In other works, while the average range of exposures are known for various groups, it is difficult to say with any degree of certainty exactly what the exposure duration and pattern is (that is, number of day, weeks and months, and frequency) for all members of these exposed groups. Ferthermore, the Supreme Court in the Benzene decision indicated that the Agency was free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of overprotection, rather than underprotection (448 U.S. 656) and did not have to support its findings with anything approaching scientific certainty. This is of course consistent with the statutory mandate to protect *every* working man and woman insofar as possible from material impairment.

The Agency will continue to seek a more scientifically precise method for accounting for intermittency of exposure. If such a method can be found and if scientific evidence supports the proposition that the risk from intermittent exposure decreases significantly, then OSHA may consider some adjustment in the proposed PEL for various industry segments.

VI. Summary of Regulatory Impact and Regulation Flexibility Analysis

A. Introduction

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, individual industries, geographical regions, or levels of government. The Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) similarly requires the Occupational Safety and Health Administration (OSHA) to consider the impact of the proposed regulation on small entities.

In accordance with these requirements, OSHA has prepared a Preliminary Regulatory Impact and

Regulatory Flexibility Assessment for the ethylene dibromide (EDB) standard. This assessment describes the industries affected by the standard, the regulatory alternatives, the effects of non-regulation, the costs of compliance with the proposed standards, the technological feasibility of the proposed provisions, and some of the potential benefits that will occur to employees exposed to EDB at their places of work.

The Secretary has determined that this action would not be major as defined by Section 1(b) of Executive Order 12291. The Secretary also certifies that this action would not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. The Preliminary Regulatory Impact and Regulatory Flexibility document is available in the docket office for inspection and copying.

B. Summary of Industry and Exposure Profiles

OSHA estimates that the proposed EDB standard would cover approximately 600 continuously exposed employees and about 56,400 intermittently exposed workers in seven industry sectors. Continuously exposed employees are defined as those exposed on a daily basis such as in the manufacturing of EDB. In termittently exposed employees are defined as those exposed on a seasonal or periodic basis such as those in the citrus industry.

The employees covered by the proposed standard work in seven industry sectors: EDB manufacturing; pesticide formulating; manufacturing of gasoline antiknock compounds and their blending; handling of fumigated citrus, grain, and papaya; and flour mill equipment fumigation. The EDB manufacturing industry is comprised of 4 large firms (one firm recently ceased manufacturing EDB), only 1 of which has annual sales under $1 billion. OSHA has identified 18 firms with 20 plants that blend and repackage EDB for pesticides. No firm had annual sales less than $0.5 million. Four firms manufacture antiknock compounds that contain EDB. These firms all had annual sales of more than $500 million. Six Hawaiian packinghouses handle fumigated papaya. Five out of six of these firms are relatively small, averaging 24 processing employees each. The average value of fresh utilized production for the 1980–1982 growing season was about $11 million.

OSHA has determined that approximately 2,800 employees are exposed seasonally in the handling of fumigated citrus. Outside of California, workers that are exposed to EDB in this industry include Florida and Texas truckers, Texas packinghouse employees, and Florida and Texas longhoremen and warehousemen. Those jurisdictions covered by the State of California's EDB standard (CAL/OSHA) are excluded from this analysis because they are presumably in compliance with the State plan standard and therefore they would incur no additional compliance cost.

Florida orange production was valued at over $1 billion in the 1980–81 crop season and Texas grapefruit production was valued at almost $250 million in the same time period. One industry uses EDB in the fumigation of flour mill equipment. Approximately 275 firms with about 8,000 employees are exposed to EDB periodically in this industry. Firms with less than 20 employees had annual sales averaging nearly $500,000 (in 1972 dollars) and firms with 20 or more employees had annual sales averaging over $10 million. Grain elevators use EDB to fumigate grain in storage. About 7,550 country elevators employing about 45,000 employees are exposed to EDB on the average less frequently than employees in these other industries.

C. Summary of Benefits

In its evaluation of the cancer potential of EDB exposure, OSHA finds that for every 1,000 workers continuously exposed over a working lifetime, EDB would cause between 70 and 725 cancers at exposures of 20 ppm, between 1.7 and 62 cases at 1 ppm, and from 0.2 to 6 cancers at 0.1 ppm. On the basis of current exposure estimates for the roughly 600 workers who are continuously exposed to EDB on a daily basis, these risks indicate that EDB would cause between 1 and 8 cancers in this group. Compliance with the proposed standard would reduce this number to 0 to 3 cancers.

OSHA has not yet estimated the number of cancers that EDB would cause among the approximately 56,000 workers exposed on a less than daily basis and is soliciting information from the scientific community on the appropriate means to quantify the risks to these workers. A number of factors, however, lead OSHA to believe that the risks resulting from these intermittent exposures are significant. For example, the NCI oral gavage study, which is the only laboratory study that may be analogous to intermittent exposures, showed cancers in the same order of magnitude as studies based on continuous exposures. In addition, dermal and oral exposure may make a significant but unquantifiable contribution to the total EDB exposure of some industry segments, such as citrus handling, where the exposure to airborne EDB may be characterized as seasonal. Although these dermal exposures are not taken into account in any of the risk assessments, there is a real possibility that dermal exposure contributes to total exposure even when there are no splashes or spills of EDB.

Moreover, OSHA believes that the hazard to employees exposed to EDB is not limited to cancer but reflects the compounded risks from carcinogenicity, mutagenicity, spermatotoxicity and damage to the kidneys, liver, spleen, respiratory tract, central nervous system, skin, and eyes. While data are not available to permit the frequency of these effects to be precisely predicted, together they support OSHA's determination to promulgate a regulation that protects all employees exposed to EDB.

D. Technological Feasibility

OSHA has examined the technological feasibility of the proposal and concluded that, based on available data, the proposal is technologically feasible across all of the affected industries examined. However, OSHA has not yet obtained complete data to determine the technological feasibility of engineering controls for those firms that are engaged in the manufacture of antiknock compounds and their blending. OSHA has hired Centaur Associates to complete this assessment and their findings will be available during the public participation period.

E. Summary of Costs

Based on the data currently available, OSHA estimates that the annual cost of complying with the proposed standard would not exceed $3.9 million. Consequently, this regulation is not a "major rule" as defined by the criteria of Executive Order 12291. These annual costs include $51,500 for EDB manufacturers, $96,100 for EDB pesticide formulators, and $675,200 for those firms that handle fumigated cirtrus. The annual costs also include $3.05 million for flour mills and $39,400 for firms that handle fumigated papaya. Grain elevators are likely to incur few costs because they should be able to discontinue the use of fumigants that contain EDB and to substitute other fumigants. To supplement these findings, OSHA has contracted with Centaur Associates to gather additional data to characterize the proposal's impact on the compliance costs, technology, and economic status of these industry sectors. In addition, Centaur is gathering similar data for firms engaged in the

manufacturing and blending of antiknock compounds. These findings will be made available during the public comment period.

Medical surveillance and respiratory protection account for more than two-thirds of the annual compliance costs estimated to be incurred by firms in these affected industries. Medical surveillance is expected to cost approximately $1.6 million, or 41 percent of the annual compliance costs, and respiratory protection is estimated to cost about $939,000 or 24 percent of the annual compliance costs. The costs to install engineering controls accounts for less than 13 percent of the annual costs.

F. Economic Impacts and Regulatory Flexibility Analysis

This regulatory assessment also considers whether the industries affected by the standard would remain economically viable after compliance with the provisions of the proposal. The assessment concludes that compliance with the proposed EDB standard would have no significant economic impacts on EDB manufacturers and users. Available data indicate that compliance costs would be no more than 0.1 percent of total sales in any of the affected industries. In view of the relatively small magnitude of these costs, any effect on prices and output would be almost negligible. While data on the profitability of individual firms are not yet available for all the affected industries, information regarding the magnitude and distribution of compliance costs among the affected firms indicates that the proposal should not adversely affect these firms' competitive abilities.

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164 [5 U.S.C. 601 et seq.]) OSHA has given special consideration to the mitigation of the economic impacts of the proposed standard on small entities. OSHA does not anticipate that the proposed standard would adversely affect small entities. Nevertheless, OSHA seeks additional data on this subject as few responses to OSHA's Advance Notice of Proposed Rulemaking concerned economic impacts. Further attempts to design a standard to minimize the relative impact on small entities, while ensuring safety and health in the workplace, will depend upon the information obtained during the forthcoming public participation period.

VII. Environmental Impact

On December 18, 1981, OSHA published an Advance Notice of Proposed Rulemaking (ANPR) (46 FR 61671–76) for occupational exposure to ethylene dibromide (EDB). Information was solicited from the public on a variety of issues including environmental impacts of a proposed revised standard. The comment period for this ANPR ended on May 31, 1982. The information and comments submitted in response to the ANPR have been reviewed in acccordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.) the Guidelines of the Council on Environmental Quality (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary has determined that the proposed rule will not have a significant impact on the environment external to the workplace. Impacts onthe workplace environment are discussed in other portions of this preamble.

EDB is used in the manufacture of antiknock additives for gasoline, as a spot fumigant on cereal and grain handling equipment, as a soil fumigant, as a source of bromine in organic synthesis processes, in the manufacture of vinyl bromide, as a catalytic agent, and as a specialty solvent for resins, gums, and waxes.

The Environmental Protection Agency (EPA) has the authority to regulate the use and application of EDB as a fumigant under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 et seq.). EPA regulations on the enforcement of FIFRA are found in 40 CFR Part 162. As a fumigant, the formulations of EDB pesticides are registered with EPA and are required to be labelled properly as to their toxicity to humans, their particular hazards, their routes (s) of exposure, and the precautions to be taken to avoid accident, injury, or damage. Application of these pesticides may only be performed in accordance with the precautions set forth on the label. Also, under the Clean Air Act (41 U.S.C. 1857 et seq.) and the National Ambient Air Quality Standards for Total Suspended Particulates, EPA is responsible for maintaining ambient air quality by preventing or controlling air pollution.

Under the proposed OSHA standard, the current permissible exposure limit (PEL) of 20 ppm would be reduced to .100 ppm as an 8-hour, time-weighted average (TWA), with a ceiling of 0.5 ppm. This reduction in the exposure limit is not anticipated to impact significantly on the external environment because (1) any resultant emissions to the external atmosphere would not represent a significant increase, (2) no solid waste is directly associated with EDB fumigation, and (3) the standard is not likely to impact upon the use of leaded gasoline, the largest outlet for EDB and related emissions. In addition, provisions of the proposal such as medical surveillance, employee information and training, hygiene facilities and practices, warning information, recordkeeping, and protective equipment and clothing are not anticipated to have a significant impact beyond the workplace.

Although the removal of increased amounts of EDB from the workplace air might seem to contribute to the pollution of ambient air surrounding EDB operations and applications, this is not anticipated because the amount of EDB that migrates to the external environment is not likely to increase. Many operations occur outdoors and controls that might be implemented under the proprosal probably would not change the amount of emissions to the atmosphere. In cases where worker exposure is reduced by the use of improved control methods, such as negative-pressure ventilation and purge systems in fumigation chambers, atmospheric emissions of EDB would remain constant, having an insignificant impact on the external environment. To further illustrate, in cases where exhaust emissions from fumigation chambers are controlled by extending the height of the stacks, the ground level concentrations, rather than the quantity of EDB would be reduced.

In cases where liquid EDB is transported or stored, there may be some potential for spills or leaks. Because of the nature of EDB, however, such occurrences would not be as a direct result of the proposal and would continue to come under the jurisdiction of EPA and DOT regulations. Although instances of waste disposal have not been presented to the record, such disposal would also be covered by EPA Resource Conservation and Recovery Act regulations (PL 94–580, 90 Stat 2795, Sec. 2001 *et seq.*) and transportation would be regulated by the Department of Transportation. The requirements of the proposed standard will not alter present methods for waste disposal, transportation, or cleanup of EDB.

Although the largest outlet for EDB is as a scavenger in leaded gasoline, the amount present is less than 0.1 percent by weight. Exposure levels are also low during service station operations and during the distribution, storage, or bulk handling of leaded motor fuel. For this reason, these activities are exempted from the proposal. Any impacts on the use of EDB in leaded gasoline are most likely to occur as a result of the

continued use and demand for lead-free gasoline and the low growth of overall gasoline consumption, not as a direct result of the proposal.

Based on this discussion and other information presented in this Notice, OSHA concludes that there will be no significant impact on the general quality of the human environment external to the workplace, particularly in terms of ambient air quality, water quality, or solid waste disposal. OSHA, of course, reserves the right to perform additional environmental analyses based on the information and comments received in response to this Notice.

VIII. Clearance of Information Collection Requirements

The collection of information requirements contained in the proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act of 1980. These collection requirements are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation. Comments on this matter are invited and should be directed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Labor, Room 3208, New Executive Office Building, Washington, D.C. 20503.

IX. Summary and Explanation of the Proposed Standard

The proposed requirements set forth in this proposal are those which, based upon all currently available data, the agency believes are necessary and appropriate to provide adequate protection to employees exposed to EDB. OSHA has considered all recommendations received in response to the ANPR as well as numerous reference works, journal articles and other data accumulated by OSHA since the initiation of this rulemaking. The following sections discuss the individual requirements of the proposed standard.

1. Section 1910.1048. Paragraph (a). Scope and Application

This proposed standard for ethylene dibromide (EDB) is applicable to all places of employment where EDB is produced, reacted, released, mixed, blended, packaged, repacked, stored, transported, handled or distributed.

This proposed regulation does not apply to the application of EDB as a pesticide. Section 4(b)(1) of the Occupational Safety and Health Act states "nothing in this Act shall apply to working conditions of employees with respect to which other federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health." The Environmental Protection Agency (EPA) currently regulates the use of EDB as a pesticide and the application process for fumigation of agricultural products. EPA's jurisdiction arises under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*). EPA's actions indirectly affect the working conditions of employees who apply EDB as a fumigant, thus OSHA is preempted from exercising jurisdiction over those applicators as provided by section 4(b)(1) of the OSH Act. OSHA will, however, exercise jurisdiction over occupational exposures which occur subsequent to or "downstream" from the application of EDB as a pesticide.

OSHA has reviewed EDB exposure sampling data for manufacturing, blending, formulation and fumigation operations and data submitted in response to the Advance Notice for Proposed Rulemaking (ANPR) for EDB. Responses to the ANPR have provided additional information about these operations and worker exposures. OSHA has decided that this standard should apply to all workplaces in maritime and general industry. This decision is based upon available exposure information as well as the general toxicity of this material.

The proposed standard also applies to those places of employment which handle materials or commodities which have been fumigated with EDB or products containing EDB since airborne concentrations of EDB result from offgassing of fumigated commodities.

Wholesale and retail food stores, automotive service stations and the distribution, storage or bulk handling of leaded fuel are not subject to the requirements of this proposed regulation. The proposal does not cover these places of employment because OSHA's evaluation of the exposure data in these industries indicates that the potential hazards addressed by the standard probably do not exist in these industries. In addition, no hazard of dermal exposure exists when handling fumigated citrus in food stores.

It should be noted that although OSHA is proposing to exempt the above discussed operations from the standard, these operations would still have to comply with the new PEL. This is consistent with good industrial hygiene practice. The agency does not contemplate that this will place any burden whatsoever on employers not covered by this proposed comprehensive standard because all available information indicates that these workplaces have exposures well below the proposed action level.

A. Wholesale or Retail Food Stores

Under certain circumstances fresh citrus shipped from one citrus growing region to another must be fumigated with EDB to prevent the propagation of certain pests. The pests and larvae are killed by exposing the citrus to very high airborne concentrations of EDB for a specified period of time. During this time the citrus and its cardboard packaging material absorb EDB. After fumigation the fruit begins desorbing (offgassing) EDB into the surrounding environment. This offgassing continues for the next several days, diminishing over time.

Most of the fumigated citrus comes from Florida and Texas and is sold in California. OSHA conducted environmental monitoring of fumigated citrus shipments from Texas to California and from Florida to California. Florida and Texas must also fumigate citrus shipped to Japan.

Air samples were taken during fumigation operations and during the transport, unloading and warehousing of the fumigated citrus in California.[3] The results of OSHA's environmental sampling indicate that by the time fumigated citrus has been transported to the warehouses or retail food stores for marketing, very little potential for exposure to EDB remains. Sampling results indicate that airborne levels of EDB in the warehouses before shipment to food stores are below 15 ppb. While OSHA did not continue to monitor downstream exposures in wholesale and retail food stores, the reduction in the levels during shipping indicate that environmental levels must be extremely low at these destinations.

The data therefore indicates that exposures in wholesale and retail food stores are well below the proposed action level. For this reason, OSHA has decided to exclude these industries from this proposed standard.

B. Service Stations

EDB is used as an additive in leaded gasoline. After blending the additive into the gasoline, the amount of EDB present is less than 0.1% by weight (Ex. 5–54). According to the American Petroleum Institute (API), 606,000 service station workers have potential for

[3] From November 1981 to March 1982 OSHA participated in a control technology assessment study conducted by Arthur D. Little, Inc. for the U.S. Department of Agriculture's Animal and Plant Health Inspection Service. OSHA conducted the environmental monitoring of airborne EDB for this study. Samples were taken at the fumigation station and in the trailer as the citrus was offgassing and transported to California.

exposure to EDB from leaded gasoline (Ex. 5–54). The results from full shift air sampling show that levels are very low, ranging from 0.03 ppb to 0.30 ppb. The highest individual sample reported was 1.8 ppb. Standard Oil stated that the average EDB concentrations measured at certain Amoco service stations were less than 0.005 mg/m³ (0.65 ppb) (Ex. 5–30). NIOH sampling results corroborate these figures. Samples collected at Cincinnati area service stations (which ranged in times between 71 to 210 minutes) were all below the 0.003 mg (0.0004 ppm) analytical limit of detection. Actual exposures may have been lower, however, limitations in the sampling and analytical methods used did not allow a more quantitative assessment. (NIOSH Memo, October 4, 1977). All of NIOSH's results were below OSHA's proposed PEL of 100 ppb.

Operations associated with leaded gasoline currently require stringent worker protection because of the toxic ingredient tetraethyl lead (TEL). These operations require the use of dermal protection from TEL under the general industry standard 29 CFR 1910.133 and 1910.1000.

California's Final General Statement and Summary of Opposition Testimony Concerning the EDB Standard (Ex. 7–8, Page C2) also indicates that exposure levels from service station operations are low, typically less than 7 ppb. The California standard exempts exposures from leaded gasoline from all provisions except the permissible exposure limit. All the available data indicates that airborne exposure levels are below the action level for service station attendants. The agency has therefore decided to exclude gasoline service stations from coverage under this proposed standard.

C. Distribution, Storage, or Bulk Handling of Leaded Gasoline

The agency decided to exclude from coverage that portion of the leaded fuel industry involved in the distribution, storage or bulk handling of leaded motor fuels as the available data demonstrate negligible exposure in this industry. These operations involve closed systems where the percentage of EDB by weight is 0.1%. After bending the EDB into the fuel, the need to control exposure to another toxic ingredient, tetraethyl lead (TEL) adequately keeps EDB exposure well below 130 ppb (Ex. 5–38). Examination of the data submitted indicates all sampling results were below OSHA's proposed action level. The API submitted sampling data for employees from one company engaged in terminal operations including loading and unloading of truck tankers. All air sample results were well below the proposed action level and in fact were less than 10 ppb (Ex. 5–54). While there may be a possibility of spills or accidental release of leaded gasoline vapors containing EDB in air due to the volume of material transported, concentrations of EDB in such instances would vary in proportion to the amount spilled. Since leaded gasoline also contains TEL, which has a greater acute toxicity, precautions must be taken to protect workers during clean up operations or emergency situations. The precautions required for TEL also would provide protection against any potential exposure to EDB.

2. Paragraph (b). Definitions

This section contains a list of definitions applicable to this section.

An "action level" of 0.05 parts per million (ppm) (50 parts per billion (ppb)) as an 8-hour time weighted average is provided in the proposal. The action level is the point at which certain provisions of the proposed standard must be instituted, such as medical surveillance. It provides a way of maximizing employee protection in those instances where exposures are possibly significant and minimizing employer obligations by defining the point below which no action is necessary. The broad scope of the proposal necessarily encompasses many employers whose employees are exposed to levels of EDB below the PEL. OSHA expects that this action level mechanism will greatly limit the number of workplaces covered by this proposed standard. For example, medical surveillance only has to be implemented for employees exposed to EDB at or above the action level for a total of 30 or more days per year. If an employer can demonstrate that an employee has not been exposed to this level for the required duration, the employer does not have to place that employee in a medical surveillance program. Thus, the action level concept provides an objective means of tailoring different sections of the standard for those employees who are at the greatest risk of developing an illness from exposure to EDB.

The statistical basis for determining the action level has been discussed in connection with several other OSHA health standards. In brief, although all measurements on a given day may fall below the permissible exposure limit, some possibility exists that on unmeasured days the employee's actual exposure may exceed the permissible limit. Where exposure measurements are above one-half the PEL, i.e. above the action level, the employer cannot reasonably be confident that the employee may not be overexposed on days when measurements are not taken (Leidel, N.S. et al. 1975). Therefore, requiring periodic employee exposure measurements to begin at the action level provides the employer with a reasonable degree of confidence in the results of the measurement program.

This proposed standard incorporates a more appropriate term for establishing a Short Term Exposure Limit (STEL). While OSHA has in many instances used the word "ceiling" to define a 15 minute average measurement, the ACGIH defines ceiling as "a concentration that should not be exceeded even instantaneously." Since most of the agency's airborne exposure limits were adopted from ACGIH's Threshold Limit Values, less confusion may exist if the definitions are similar. So, like the ACGIH, OSHA believes that a STEL is not a separate independent exposure limit, rather it supplements the time-weighted average (TWA) limit where there are recognized acute effects from a substance whose toxic effects are primarily of a chronic nature. STELs are recommended only where toxic effects have been reported from high short term exposures in either humans or animals.

A definition of the term "emergency" is included in the proposed standard. For the purpose of the standard, emergencies are occurrences such as, but not limited to equipment failure, rupture of containers, or failure of control equipment which may result in an unexpected release of EDB. The standard imposes requirements to protect employees during emergency situations, such as pre-arranged emergency planning and medical surveillance.

Every spill or leak does not automatically constitute an emergency situation. The exposure to employees must be high and unexpected. Emergency situations include dermal exposures from a splash or leak.

3. Paragraph (c). Permissible Exposure Limit

OSHA is proposing to reduce the permissible exposure limit (PEL) to 0.1 ppm as a TWA with a short term exposure limit (STEL) of 0.5 ppm. This proposed PEL is based on the findings by OSHA that exposure to EDB at the current PEL presents a significant risk to employees and that the proposed standard will substantially reduce that risk.

In making a determination of significant risk, it is appropriate for OSHA to consider a number of different factors. The Supreme Court in the

Benzene decision provided some general guidance as to the process, stating that "while the agency must support its finding that a certain level of risk exists with substantial evidence, we recognize that its determination that a particular level of risk is 'significant' will be based largely on policy considerations" (448 U.S. at 655, 656 n.12). Consistent with rational policy judgment, OSHA has recently identified the following factors as being among those which should be considered: (1) The quality of the underlying data; (2) the reasonableness of the risk assessment; (3) the statistical significance of the findings; (4) the type of risk presented, and (5) the significance of the numerical risk relative to other risk factors (47 FR 15358, 15365, April 9, 1982). These factors have been evaluated with respect to the EDB risk assessment performed (see Section VI of this preamble).

OSHA has determined that exposure to EDB at the present standard of 20 ppm clearly poses a significant risk of material impairment to employees. Material impairment means employees contracting cancer, suffering adverse reproductive effects and other adverse effects such as liver and kidney damage due to exposure from EDB. The significance of this risk has already been informally acknowledged by some industries, who have reacted to the developing information regarding the potential health effects of EDB by voluntarily reducing the exposure of its employees.

Data received in response to the ANPR indicate that all the major producers maintain worker exposure levels at 0.5 ppm (TWA) or less. Section 6(b)(5) of the OSHA Act states "The Secretary . . . shall set the standard which must adequately assures on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life". The agency does not feel that the 0.5 ppm level will adequately protect employees and therefore proposes to establish a PEL at the 0.1 ppm level. Ethyl Corporation, which has the largest EDB production facility in the world, stated that its current internal exposure guideline is 0.1 ppm averaged over 8-hours. Under normal operations, engineering controls maintain the exposure of the EDB operator at less than 0.1 ppm. (Ex. 5–47) Conversely, formulation operations, while having exposures below the current 20 ppm 8-hour TWA, still have high employee exposures.

A short term exposure limit (STEL) may be necessary to provide adequate protection against possible reproductive effects from acute exposure for EDB exposed workers. OSHA recognizes that in some operations, relatively high excursions may be encountered by employees for short periods of time. The Brown risk assessment (Ex. 11) recommends that a short term exposure level of 0.5 ppm be established. OSHA supports this recommendation and has consequently proposed a STEL limit of 0.5 ppm. OSHA solicits comments on the establishment of a STEL limit for EDB.

OSHA has considered the economic and technological feasibility of the proposed PEL. Based on data provided by OSHA contractors and data submitted to the record in response to the ANPR OSHA believes that achieving compliance with a PEL of 0.1 ppm as an eight hour time-weighted average STEL and a of 0.5 ppm as averaged over a 15-minute period during the workday is both economically and technologically feasible. (See section VIII and the Regulatory Analysis for further discussion of this issue.)

4. Paragraph (d). Regulated Area

The proposal requires employers to establish a regulated area where airborne exposures to EDB are at or above the action level. Access to the regulated area is to be restricted to those persons required by their job duties to be present in the area; specifically, to those authorized entry by the employer, this proposal or the OSH Act.

The purpose of a regulated area is to ensure that employers make employees aware of the presence of EDB at levels approaching the PEL in the work place. This may be accomplished by posting a sign. The establishment of such a regulated area is an effective means of limiting the risk of exposure to as few employees as possible. This is consistent with good industrial hygiene practice when exposure to a toxic substance can cause serious chronic health effects. This requirement has other benefits in that where personal protective equipment (PPE) may be required in these areas, the additional obligations imposed by the proposal when PPE is used is also restricted to as few persons as possible.

Additional protective measures are necessary to restrict possible ingestion and absorption of EDB for workers within a regulated area. EDB is readily absorbed through the skin and can produce systemic toxicity. Therefore the agency proposal requires employers to prohibit workers from eating, smoking, drinking or applying cosmetics in regualted areas. This is designed to reduce the risk of inadvertent exposure to EDB via contaminated materials.

This section also requires that whenever an employer at a muti-employer worksite establishes a regulated area, that employer must communicate to other employers at the worksite the location of the regulated area and its access restrictions. Such extended communication would lessen the possibility of prohibited work practices and is intended to preclude inadvertent exposure of persons not involved in EDB related operations. OSHA believes that employers who have employee exposures to EDB at or above the action level have the responsibility to coordinate their work with all other employers whose employees may be exposed because of their proximity to the worksite. A specific method of communication is not required; this allows the employer the necessary flexibility to communicate the information to other employers at the work site in the most effective way possible.

OSHA is aware that under some circumstances regulated areas may need to be established in situations involving non-permanent worksites. For example the shipboard loading of fumigated commodities may result in airborne concentrations of EDB in the cargo holds in excess of the action level. In such instances the ship's hold would become a regulated area and access to and from it must be limited until such time as the EDB levles are reduced below the action level. A similar situation may arise at warehouse facilities during the time they house EDB fumigated commodities.

OSHA is cognizant of the problems presented by these temporary worksites and seeks comments regarding the establishment of such regulated areas.

5. Paragraph (e.) Exposure Monitoring

The monitoring requirements of the standard are proposed pursuant to section 6(b)(7) of the Act which mandates that standards dealing with toxic materials promulgated under section 6(b) shall, where appropriate, "provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees." The primary purpose of monitoring is to identify the sources of EDM emission and to determine the extent of employee exposure to EDB. It is particularly important with EDB since it is a colorless, odorless substance and has been shown to cause adverse health

effects at low doses. Once a determination is made that control of employee exposure to EDB is required, monitoring will enable the employer to select proper control methods and evaluate the effectiveness of the methods selected. Additionally, monitoring enables employers to notify employees when their exposure levels exceed permissible limits, as required by section 8(c)(3) of the Act. Such information is also necessary for the examining physician in order to effectively implement a medical surveillance program. For purposes of the monitoring requirements, as well as other provisions of the proposal, "exposure" means that which would result if respiratory protection were not used.

The proposed standard requires that exposure monitoring be conducted by taking air samples that are representative of each employee's full shift and short term exposure to EDB. The standard requires that for all operations, except those which are seasonal or intermittent, employers must conduct an initial monitoring within 60 days of the first introduction of EDB into the work area. however, if the intial monitoring or any subsequent monitoring indicates employee exposure to EDB above the action level but below the PEL, the employer than incurs an obligation to continue to perform monitoring. The employer must establish a cycle to repeat the monitoring of each such employee's exposure at least annually. A more frequent obligation occurs if employee exposure is found to be above the PEL. The proposed standard establishes a remonitoring cycle of at least every 6 months when exposure is found to be above the PEL.

In addition to the periods specified for remonitoring cycles, an employer must remonitor and make a new determination of employee exposure within 15 days (for other than seasonal exposures) if there has been a change in production, process or control measures which may result in new or additional employee exposure to EDB It is contemplated that the employer may use the periodic monitoring results to fulfill this additional monitoring requirement provided the periodic monitoring is done within 15 days of the change in production, process or control measures.

Employers can terminate the monitoring if employee exposure is found to be below the action level. However, if there is a reason to suspect that new or additional exposure may occur because of a change in production, process or control, the employer must reinstitute the monitoring program.

OSHA believes that it is necessary in those workplaces where EDB is present that each employer measure employee exposure to EDB using a reliable and accurate sampling method. Monitoring must at least be representative of each employee's full shift and short term exposure. Each employee's individual exposure need not be measured to fulfill the monitoring requirement, as long as sufficient sampling is done to allow the employer to determine each employee's exposure. This provides some the flexibility in complying with the intent of the initial monitoring requirement without incurring unnecessary costs from repetitive monitoring procedures.

The employer has the latitude of selecting the number of samples taken to represent full shift exposure for each job classification on each shift. For those job classifications with similar exposure on all shifts, only one set of representative measurements per job classification is necessary. This will minimize duplicative efforts and costs in complying with the monitoring requirements.

Although individual measurement may be the ultimate indicator of an employee's exposure, OSHA believes the requirement for individual measurement may be too burdensome. Moreover, representative measurements will adequately reflect exposure provided that representative samples include worst case exposure scenarios. Measurement of exposure need only be made once, assuming exposures are below the action level for continuous exposures. The determination need only be repeated if there is a change in operation such that it may create new or additional EDB exposure. The termination of the monitoring provision is only applicable to continuous operations below the action level so long as there is no change in production, process or control which could result in new or additional exposure.

Employers are not precluded from taking individual exposure measurements for each employee; individual measurements are certainly considered to be representative; however, representative monitoring requirements merely establish the minimum that the employer must meet. In establishments having more than one work operation involving the use of EDB, for monitoring to be representative, such monitoring must be performed for each type of employee exposure within each operation. Employers who have taken exposure measurements within six months of the effective date of the final regulation may use the results of those measurements, provided that they meet the accuracy and confidence levels delineated in paragraph (e)(5), to satisfy the requirements for conducting initial monitoring.

Certain uses of EDB are seasonal in nature as opposed to continuous, year-long operations. One such major noncontinuous use is the fumigation of citrus which is conducted after harvest but before the delivery of fruit to the warehouse. Other uses of EDB are intermittent in nature. An example of intermittent use would be the fumigation of grain in grain elevators or the arrival at elevators of freshly fumigated grain that may occur many times during the calendar year, albeit sporadically. A special definition of intermittent exposure is described in the methods of compliance section of this preamble.

Employers who have operations where employees are exposed to EDB on a seasonal or intermittent basis are required to conduct exposure monitoring while EDB is present in the workplace. Seasonal or intermittent operations may be extremely sporadic and variable; therefore, the proposal requires monitoring at least annually regardless of the results of the last monitoring event. The agency believes this is necessary to assure employee protection in view of the fact that it will be difficult to ascertain whether conditions and exposures remain the same from year to year. Accurate exposure measurements in these situations are further complicated because EDB is a colorless, odorless substance at the PEL.

Employers with seasonal operations are further required to conduct the monitoring within 30 days of start up or within 30 days of the first introduction of EDB into the workplace. The proposal does not allow a termination of monitoring for operations which are seasonal or intermittent for the reasons that it will be difficult to ascertain without remonitoring whether exposures are the same from year to year. No specific period of time is given for remonitoring after a change in operation under these circumstances because the exposures may be very short or sporadic and remonitoring may have to be done quickly to afford adequate protection to workers. OSHA is aware that seasonal and intermittent operations may have greater fluctuations in exposure than continuous operations. Due to EDB's extremely toxic properties and in view of these fluctuations, remonitoring must be conducted as soon as possible after the fluctuation.

OSHA believes employees have a fundamental right to be apprised of the results of monitoring whether or not

they are above the PEL. This is consistent with the mandate of section 8(c)(3) of the Act which not only requires that accurate employee exposure records be kept when monitoring is required but that employees be given access to such monitoring records.

Although 29 CFR 1910.20 requires that employees have access to exposure records upon request, the proposal requires that the employer notify all employees of the exposure measurements which are representative of their exposure. This explicit requirement to inform employees has educational value and will encourage more effective and enlightened worker participation in occupational health programs. Recognizing that for notification to be an effective informational process it must occur in a timely manner, the proposed standard requires an employer to notify each employee of his or her exposure within fifteen (15) days of obtaining the results of measurement. OSHA believes that 15 days is a reasonable period of time to implement this requirement.

The employer is given the flexibility to communicate monitoring results in a manner that is judged to be most reasonable. Only in those instances where an employee's exposure is above the PEL is the employer required to notify the employee of the results of monitoring in writing—stating that the PEL was exceeded and provide a description of any appropriate corrective action taken.

OSHA is aware that in some circumstances, particularly in those involving stevedoring operations, employees who are monitored for EDB exposure may not always work for the same employer or report to the same work location each day. Under these circumstances, it may be difficult to directly notify employees of their monitoring results. While OSHA fully expects the employer to make every reasonable attempt to notify those affected employees, the proposed regulation allows the employer to notify the employee's authorized representative of the monitoring results.

The available methodology for sampling and analysis of EDB demonstrates that it is possible to monitor employee exposures down to 0.001 parts per million. At these concentrations sampling and analytical methodologies are available which have an accuracy to a confidence level of 95 per cent, of not less than plus or minus 25 per cent.

Samples may be collected by absurption of EDB on charcoal contained in glass tubing through which a volume of air is drawn. Passive dosimeters may also be as effective in evaluating 8-hours exposures. The use of a portable gas chromatograph may be of special use in evaluating peak or short term exposure on site. The NIOSH analytical method (P&CAM 260) contained an Appendix D will detect EDB in parts per billion with the accuracy delineated in the proposal using gas chromatography and electron capture detection. Although these techniques require care, they are readily available and should pose no special difficulties for employers covered by this proposal.

The proposed standard allows personal sampling using charcoal tubes or other absorbent type measurement methods for monitoring. This type of sampling must be followed by a quantitative chemical analysis that usually occurs offsite some days later. Traditionally, OSHA has used this method to monitor employer compliance with its health regulations. However, this approach may be completely inappropriate for monitoring intermittent operations under changing conditions. For example, the results from monitoring stevedores loading holds in a ship, using charcoal tubes as a collection media, later followed by formal analysis in a chemical laboratory, probably would not be available until after the ship has left the dock and the workers have left the worksite.

A more appropriate and advantageous monitoring technique would be to require that only direct reading instruments be used in these situations. By direct reading, OSHA means some method of immediately being able to determine employee exposure levels. In this manner an employer would immediately know if the exposure levels are above the PEL and the employer could initiate action to reduce those levels. In addition, direct reading instruments would indicate when the level was exceeded so that other protective measures might be instituted. Another advantage of direct reading monitoring capability would be the ease of informing employees of their monitoring results while they are still at the worksite. An apparent disadvantage is the lack of readily available testing equipment. The only device OSHA is aware of that will conform to the precision and accuracy requirements of the proposed standard and selectively screen out other chemicals, is a gas chromatograph (GC). Portable GC's cost more money initially than pumps and charcoal tubes and require experienced professional operators to use.

The Florida Department of Citrus has had some experience in the use of a GC for monitoring exposure levels. OSHA requests comments and suggestions for monitoring seasonal and intermittent exposures and specifically requests comments on whether monitoring with direct reading instruments should be required.

6. Paragraph (f). Observation of Monitoring

Section 8(c)(3) of the Act requires that employers provide employees and their representatives with the opportunity to observe monitoring of employee exposures to toxic substances or harmful physical agents. In accordance with this section, the proposal contains provisions for such observation of monitoring for EDB exposures.

The observer, whether an employee or a designated representative, must be provided with, and required to wear, any personal protective equipment that is required to be worn by those working in the area that is being monitored. The observer must also comply with all other applicable safety and health procedures.

7. Paragraph (g). Methods of Compliance

The proposed standard requires that except for a narrowly defined exception discussed below, the employer must institute feasible engineering and work practice controls to reduce employee EDB exposures to or below the permissible exposure limit. Where engineering controls or work practices cannot be instituted to reduce exposure to or below the permissible level, these controls must nontheless be implemented to reduce exposures to the lowest feasible level. Where engineering controls do not reduce exposure below the PEL, they must be supplemented by the use of respirators to provide the necessary protection.

The proposed rule's reliance on engineering controls as the primary means of compliance is, in part, an acknowledgment that a particularly effective method of controlling employee exposure is to control the emission of toxic substances at their source through mechanical means combined with the use of work practices. Good engineering and work practice controls also minimize splashes and spills. An added benefit of these controls is reducing dermal exposure to employees.

However, OSHA also recognizes that respirators may provide acceptable protection when an employer establishes stringent procedures and then carefully supervises their implementation on a continuous basis. The agency recently published an ANPR (48 FR 7473) requesting comments on all

relevant issues related to the circumstances in which it might be appropriate for OSHA to allow greater reliance on respirators to protect workers from the various airborne contaminants regulated by OSHA. The agency is particularly interested, in conjunction with that regulatory initiative, in receiving comments, information and data concerning the extent to which respirators may provide effective protection against EDB exposure and may be relied upon as a substitute for engineering controls beyond those circumstances described in this proposal.

The engineering control requirements contained in this proposal may not be technologically or economically feasible in some operations. In recognizing these circumstances the proposal allows an employer to demonstrate the infeasibility of engineering and work practice controls in a particular operation and allows the use of respirators as supplementary protection in these circumstances. The burden of proof is appropriately placed on the employer to show that engineering and work practice controls are not feasible. The employer is familiar with the workplace operation and is therefore in the best position to evaluate various types of controls as they apply to that particular workplace environment. There are many types of engineering and work practice controls available to reduce exposure. For example, in a warehouse the use of specially equipped forklift trucks employing such technology as the use of a downdraft purified air flow may provide the protection necessary. Similarly, OSHA believes that the use of portable blowers on the decks of ships being loaded with EDB fumigated commodities may be extremely effective in reducing exposures. The potential technological problems and economic ramifications of installing various controls and implementing various practices may vary substantially from workplace to workplace.

In addition to permitting alternative compliance methods upon a showing that engineering and work practice controls are not feasible or have not been installed, this proposal allows the employer a measure of discretion in selecting the method of complying with the PEL in certain limited situations. Thus where an employer has a workplace where exposures to EDB are not only intermittent but are limited to a few days per year (30), the employer may select among alternative methods of compliance: engineering controls, work practice controls, respirator protection or any combination of these controls to comply with the PEL. OSHA is proposing to allow the use of these compliance alternatives where extremely sporadic and intermittent exposure patterns may make effective engineering controls and work practice controls impractical, disruptive and inconvenient. For the purpose of this proposal, intermittent operations are defined as those which result in exposures occurring for 1 or 2 days at any one time. A total of 30 days per year of workplace exposure is meant to describe days of operation involving the use of EDB in the workplace and not the number of days an employee is exposed. The agency has chosen to articulate this exposure as workplace exposure and not employee exposure to better characterize its intended application. The 30 day exemption provision is not intended to permit the use of employee rotation or short tenure employees in lieu of compliance with the general requirements of the standard.

The proposal also includes a provision requiring an employer who either creates or has control over abating a hazard to institute work practice controls to reduce EDB exposures to downstream employees of other employers. The requirement was added because in some situations the previous employer (i.e. a trucker or shipper) may be in the best situation to take action because that employer has both the knowledge of the hazard and ability to aid in the control of employee exposure. The provision is not intended to be difficult or burdensome to the employer who could affect potential exposures of downstream personnel to EDB. For example, a trucker may be able to reduce significantly exposures to employees unloading fumigated citrus by opening the rear doors of the trailer and aerating the load before unloading.

Administrative controls which distribute exposures over a large number of workers for less time are not permitted in lieu of engineering controls or limited respirator usage. The use of this control practice increases the population of employees at risk from exposure to EDB. Therefore, its use as a control strategy before the use of respiratory protection is not contained in this proposal.

OSHA requests comments on all aspects of the compliance approach taken in this proposal.

8. Paragraph (h). Respiratory Protection

The proposed standard requires that whenever respirators are necessary to reduce employee exposure to or below the PEL the employer must provide the respirators at no cost to the employee and assure their use. The use of respirators may be necessary to reduce employee exposure where the use of engineering controls or work practice controls are not feasible, as supplementary protection if such reduction controls will not achieve the necessary reduction while controls are being implemented and during emergency situations. In addition, the proposal gives the employer the option of using respiratory protection to control workplace exposures to EDB which are intermittent and less than 30 days per year.

The proposal contains specific requirements for the use, selection, maintenance, and fitting of respirators. The proposal contains a table listing the types of respiratory protection to be provided based on airborne concentrations of EDB in the workplace. The respirator selection table is consistent with the American National Standard Institute's Z-88.2—1980 practices for respirators protection factor table. The table is also similar to that recommended in the NIOSH Criteria Document, except that OSHA proposes to allow the use of negative pressure respirators under certain conditions. Historically, NIOSH has not recommended the use of negative pressure air-purifying respirators when the regulated substance has poor warning properties and cannot be detected by smell at concentrations which are half the PEL. EDB is considered to have poor warning properties; the odor threshold of EDB in 50% of the population tested is 10 ppm, which is one hundred times greater than the proposed PEL of 0.1 ppm. OSHA understands NIOSH's concern and their failure to approve negative pressure air-purifying respirators for materials which have poor warning properties. Since it is not possible for the respirator wearer to detect leakage or breakthrough within the facepiece until clearly overexposed, OSHA is proposing to allow the use of air-purifying negative pressure respirators under certain circumstances.

Generally, where negative pressure respirator use is allowed, OSHA requires that the respirator be approved by NIOSH/MSHA under the provisions of 30 CFR Part 11 for use with a particular substance or a class of substances. As noted above, NIOSH will not approve a negative pressure air-purifying respirator for use with substances with poor warning properties such as EDB. This proposal would allow their use at low concentrations where specified fit testing is done. In this instance where negative pressure air-purifying respirators are used, the

proposal requires that they must have NIOSH approval for use with organic vapors, a more general designation, rather than foregoing the approval requirements altogether. The NIOSH approval system helps assure the necessary quality control in the manufacturing of respirators and minimizes the manufacture and sale of poorly designed or inefficient respirators.

OSHA has determined that organic vapor cartridges can adequately absorb airborne concentrations of EDB up to 1 ppm. Organic vapor canisters can adequately absorb airborne EDB up to 10 ppm. OSHA has conducted limited tests of the collection efficiency of half-mask cartridge and full face organic vapor canisters for a few respirators produced by several manufacturers at concentrations above the proposed PEL (Nelson, 1983). The study tested cartridge and canister breakthrough of EDB under 85% relative humidity and demonstrated that the collection media was adequate to provide protection if the EDB concentration was maintained at or below the limits described in Table 1. As a result of this testing OSHA believes that cartridge charcoal filters can provide at least eight hours of protection form airborne concentrations of EDB up to 1 ppm and that canisters can provide protection for at least 16 hours without breakthrough for exposures of EDB up to 10 ppm. OSHA is proposing to allow the use of half mask cartridge respirators for up to 8-hours during a work shift (where the airborne EDB concentration is not greater than 1 ppm) and the use of full face canister respirators (where the airborne EDB concentration is not greater than 5 ppm) for two 8-hour work shifts within one 48 hour period on two consecutive days. The 48 hour limitation is necessary to protect the integrity of the absorbent material and to assure that the collection efficiency is not compromised by water, vapor or solvent migration.

Since EDB has poor warning properties and no end of service life indicators are available, cartridges and canisters must be properly tagged with information concerning when their use began. A label which indicates the date and time of a canister's installation in the respirator is required to assure it is not used beyond the period allowed by the proposal. Additional testing may reveal that the collection media could provide protection for a longer period of time. If additional canister or cartridge testing demonstrates that the absorption media can last longer, these data may support less frequent replacement of the cartridges or canisters. Additional test data concerning the proposed use of air-purifying respirators is requested.

Numerous other factors may affect the performance of air-purifying respirators. Proper fit of the respirator is critical. In this type of respirator negative pressure is created within the facepiece when the wearer breathes. This may result in workplace air entering the facepiece through gaps and leaks in the facepiece seal, instead of passing through the absorbent material. Obtaining a proper respirator fit may require the fit testing of a variety of different mask sized from several manufacturers to select the facepiece with the best fit (least leakage around the faceseal) for each employee.

Because of the exposure hazards that may occur if a proper faceseal is not obtained while using a negative pressure respirator and because of EDB's poor warning properties, the proposal requires qualitative or quantitative fit tests be conducted when negative pressure respirators are used. Either qualitative or quantitative fit tests are required at the time of initial fitting and at least annually thereafter. Therefore, procedures for conducting qualitative fit tests are contained in the mandatory Appendix A of this proposal.

Quantitative fit testing is a procedure whereby the level of penetration of a test agent of a known concentration is measured inside the facepiece of the respirator. Quantitative respirator fit testing is generally recognized as the ideal method for determining how well as repirator fits any one individual, in that it allows the employer to continue testing until the optimum or best fitting respirator is identified and selected for the employee. Quantitative fit testing requires the use of a sophisticated monitoring device and is more expensive than qualitative fit testing to perform. Moreover, quantitative fit programs have limited availability which minmizes their usefulness for many worksites. OSHA believes that while quantitative fit testing may be preferred, qualitative testing which is conducted in accordance with the protocols described in Appendix A accomplishes the intent of the standard to assure that each employee receives and wears the respirator which provides the greatest level of protection.

Qualitative fit testing is a technique whereby a person wearing a respirator is tested to see whether a test agent with a low odor threshold can be detected inside the respirator. Qualitative fit testing is a more subjective test than quantitative testing because it depends on the individuals ability to detect the test agent. The IAA test was not designed to determine protection factors greater than 10. Therefore, there is some question as to the adequacy of using the IAA qualitative fit test when employees are to be assigned to work in atmospheres of up to 100 times the PEL. OSHA solicits comments on whether this procedure, which has been proposed in Appendix A, is adequate to assure worker protection. Submissions recommending alternative fit test procedures are requested.

While OSHA has proposed that respirators may be used to reduce employee exposure, negative pressure air-purifying respirators may only be used in concentrations of EDB below 5 ppm. These respirators are more practical than those recommended by NIOSH, they are generally lighter than self-contained breathing apparatus (SCUBA) and allow greater employee mobility than airline respirators; both of these factors may lead to greater employee aceptance. In addition, negative pressure air purifying respirators are less expensive than the other respirators permitted for use with EDB. OSHA believes that with additional safeguards, such as careful qualitative fit testing, air purifying negative pressure respirators can be used as safely as other types of respirators and can provide adequate protection against EDB in the 1–5 ppm range even though EDB has poor warning properties.

Where employees are exposed to levels of EDB greater than 5 ppm and respirator usage is permitted, airline or positive pressure respirators must be used. Airline and similar positive pressure respirators use uncontaminated air and do not have the problems associated with exceeding the absorption media's capacity (which is the case with cartridges and canisters). OSHA is only allowing airline or SCBA's which operate in the positive pressure mode. Facepiece leakage is minimized with positive pressure respirators. Therefore they can be used in both high and low airborne concentrations of EDB. Employers can always use a respirator with a higher protection factor in lower concentrations of EDB.

All employees who are required to wear a respirator must be included in a medical surveillance program. This provision insures those individuals who will be exposed to EDB above the PEL regardless of the duration of exposure to be included in the medical surveillance program. In addition, respirator usage presents an excess burden to the pulmonary system of the employee. This

burden may result in symptoms such as shortness of breath, chest pain, dizziness or fatigue. All of these symptoms will be greatly exacerbated by pre-existing lung disease such as chronic bronchitis, emphysema, asthma or pneumoconiosis. It is, therefore, imperative that all employees who will be wearing respirators be medically screened to determine fitness for respirator usage. OSHA believes that the physician can best accomplish this through utilization of a physical examination, including a pulmonary function test and a chest x-ray.

The employee must be properly trained to wear the respirator, to know why the respirator is needed, and to understand the limitations of the respirator. An understanding of the hazard involved is necessary to enable employees to take steps for their own protection. The respiratory protection program implemented by the employer must conform to that set forth in 29 CFR 1910.134 which contains basic requirements for proper selection, use, cleaning and maintenance of respirators.

OSHA has determined that air-purifying respirators may be used in a rigidly controlled program of proper fitting and sorbent replacement. When the protection factors in the respirator table are followed, organic vapor cartridges and canisters may provide adequate protection for employees. OSHA has, in two other health regulations (vinyl chloride and acrylonitrile), allowed the use of negative pressure respirators for substances which exhibit poor warning properties.

The agency seeks comments on the use of respirators, the frequency of cartridge and canister replacement and the fit testing procedures.

9. Paragraph (i). Personal Protective Clothing and Equipment

The proposed standard requires that the employer provide and assure that employees who are subject to any possibility of skin contact with liquid EDB use all the appropriate resistant protective clothing and equipment necessary to prevent dermal exposure. Resistant clothing and equipment is that which does not allow EDB to penetrate through the material being worn for 480 minutes.

The agency does not contemplate that the protective clothing and equipment provisions of the proposed regulation would apply to those workplaces where the potential for dermal exposure to EDB results solely from the handling of materials or commodities fumigated with EDB. OSHA believes that the potential for dermal exposure to EDB while handling materials subsequent to fumigation is minimal and that special protective clothing would not be necessary.

The employer is to provide protective clothing, such as gloves, boots and neck coverings as necessary and appropriate to protect whatever portion of the body may come in contact with *liquid* EDB. The employer must also provide eye protection such as face shields, vented goggles or other protective equipment when necessary to protect against eye contact. The purpose of this provision is to protect the eyes against the burning and blistering effects of EDB liquid exposure. For those operations where employees enter confined spaces such as reactor vessels or storage tanks, EDB resistant full-body suits with supplied air hoods are required.

The proposal is sufficiently performance-oriented to allow the employer sufficient flexibility to provide only the protective equipment necessary to protect employees in each particular work operation from EDB exposure. Therefore, compliance can be tailored to fit the hazards posed on a day to day basis. Many operations may not require full body protective clothing, especially if very small amounts of EDB are being handled. However, the selection of the amount of protective clothing and equipment must be adequate to prevent any exposure to liquid EDB where skin or eye contact may occur.

The toxicity associated with dermal absorption of liquid EDB supports the required immediate removal of any nonresistant protective clothing or equipment and immediate drenching with water of all parts of the body which become wet with EDB or liquids containing EDB. Serious tissue degeneration can quickly occur from skin contact or dermal absorption. Suitable facilities for quick drenching or flushing of the eyes and body are required in all work areas for immediate emergency use. Emergency showers or quick drenching devices are needed in the immediate work area because EDB can cause burns or blistering of the skin within minutes after contact.

The regulation requires the employee to remove any clothing immediately after it becomes wet or damp with liquid EDB. In this context "immediately" means as soon as it is noticed by the employee; in other words an employee should not wait or take the time to proceed to the change room. This provision is necessary because of the extremely caustic nature of EDB and the acute absorption hazard it poses. The proposed standard also provides that EDB contaminated clothing and equipment must not be reworn until the EDB has been removed from the clothing or equipment. Protective clothing and equipment should not be worn or taken home after use because it could increase the number of people exposed to EDB. The proposed standard requires employers to replace protective clothing and equipment as necessary to assure its effectiveness but does not specify a given replacement interval. Employers should make frequent inspections of clothing to assure that it retains its effectiveness. A visual inspection means a systematic examination of the equipment to ensure such equipment is not leaking or developing leaks. This requirement is necessary to minimize exposure to employees. It is particularly necessary where, as here, the substance is a colorless, odorless and extremely toxic. Clothing and equipment contaminated with EDB or liquids containing EDB should not be worn into lunchrooms to prevent the contamination of eating areas and to minimize the potential exposure hazard to other workers.

As noted above under certain circumstances the proposed standard requires the use of EDB resistant clothing and equipment where there is a possibility of skin contact with liquid EDB. Only a few materials are capable of resisting the penetration of EDB through the material and subsequently to the skin. Viton (®) elastomer and polyvinyl alcohol (PVA) are two such materials (NIOSH 81–110, Stampfer, 1983). Polyvinyl alcohol can be used only in situations where EDB is not in solution with water. Water attacks the PVA and substantially decreases its effectiveness. In this situation, it must also be used in conjunction with another material to prevent contact with moisture from the skin. To assure adequate protection, the protective equipment provided must give 480 minutes or more of protection before breakthrough. Thus, when such EDB-resistant clothing becomes wet with EDB, there is no need for the employee to remove the clothing immediately because there is no likelihood of skin exposure.

The employer is required by the proposal to store all EDB contaminated protective clothing and equipment in containers bearing the following warning:

DANGER

(TRADE NAME)

CONTAINS ETHYLENE DIBROMIDE (EDB)

CANCER AND REPRODUCTIVE HAZARD

HARMFUL IF ABSORBED THROUGH SKIN

AVOID INHALATION AND SKIN CONTACT

These containers must be closed to prevent airborne exposure because liquid EDB can vaporize, increasing airborne exposure. OSHA believes that the regular cleaning, maintenance and replacement of protective clothing and equipment is necessary in order to protect against the hazards of dermal exposure. The proposal requires that the employer assures that employees remove protective clothing and equipment in the change room and that only those employees authorized to do so may remove contaminated clothing and equipment from the change room for the purpose of laundering, maintenance or disposal. This practice limits potential exposure to those specifically trained to handle contaminated materials.

Finally, the proposal requires that employers inform those who handle the contaminated protective clothing and equipment of the potentially harmful effects of EDB. This provision is designed to emphasize the need to use proper care in handling EDB contaminated protective clothing and equipment.

10. Paragraph (j). Hygiene Facilities and Practices

All employers covered by the proposal are required to assure that employees wash hands and face with soap and water prior to eating, drinking, smoking or applying cosmetics. The proposal specifies the hygiene facilities and practices required for employee protection in all other workplaces where employees are required to wear protective clothing to prevent skin or eye contact with EDB. The requirements of the rest of this paragraph do not apply to those workplaces where the potential for exposure to EDB results solely from the handling of materials or commodities fumigated with EDB. As noted above, OSHA believes that there is little potential for dermal exposure with liquid EDB while handling materials subsequent to the fumigation. Therefore, OSHA does not contemplate that this provision will provide any compliance burden where employee exposure results solely from the handling of materials or commodities fumigated with EDB.

The proposed standard requires that for all workplaces where employees are required to wear personal protective clothing, the employer provide shower and change room facilities for employees. Employees are required to take showers at the end of the workshift to minimize the potential for skin absorption as a result of EDB contamination of clothing.

11. Paragraph (k). Housekeeping

The proposed standard requires that where there are operations involving liquid EDB or liquids containing EDB, employers institute a program to detect leaks and spills which includes visual inspections. When leaks or spills of EDB are detected the proposal requires the employer to promptly repair all leaks and clean up all spills. These work practices aid in minimizing the number of employees exposed, as well as the extent of any potential for EDB exposure.

Prevention and removal of accumulations of liquid EDB on all surfaces are critically important aspects of minimizing employee exposure. The liquid if allowed to remain on the floor or work surfaces will slowly evaporate and contribute to a possible airborne hazard or it may become a dermal hazard through inadvertent skin contact. EDB's low vapor pressure which results in slow evaporation will contribute to and prolong the hazard. The requirement to clean up spills and drips refers to the prevention and removal of visible accumulations of liquid EDB on all surfaces.

Although this proposal does not contain a provision for lunchrooms, the agency has addressed the potential hazard of inadvertent ingestion of EDB contaminated materials. To minimize possible ingestion hazards, good hygiene is even more critical for employees who do not have lunchroom facilities. Therefore, employees are required to wash hands and face prior to eating and are prohibited from eating in regulated areas.

12. Paragraph (l). Emergency Procedures

OSHA believes that because of the chemical's highly reactive and destructive properties on major organs of the body, provisions addressing emergency situations are necessary to prevent harmful employee exposure to EDB. In the event of skin or eye contact with liquid EDB, the employer is required to assure that affected employees immediately wash or shower to reduce the danger of chemical burns and skin absorption. Emergencies are occurrences such as, but not limited to, equipment failure, rupture of containers or failure of control equipment which is likely to or do result in unexpected high exposures. The serious toxic effects of an acute EDB exposure hazard may not be immediately apparent to employees. Therefore, providing immediate medical attention to those employees exposed during an emergency is of paramount concern.

The appropriate procedures for dealing with emergency situations will vary among workplaces and operations. Employers must have a pre-arranged emergency plan; these pre-established plans are necessary because quick efficient actions during an EDB release are important to insure that a minimum number of employees are injured during emergency situations. Likewise such procedures may effectively reduce the extent to which any employee may be injured. The proposed standard therefore requires that at least the following be included: prearranged plans for immediate evacuation, transportation, and medical assistance for affected employees, designation of medical receiving facilities and names of physicians to contact, procedures for reentry, for clean up, decontamination and maintenance of areas when there is an EDB leak or spill and selection of appropriate clothing and equipment for personnel. This provision is necessary to assure that rescue and treatment is achieved in a timely and efficient manner. The proposed standard requires that any employees not necessary to correct the emergency situation, leave the area of the emergency. This restriction keeps the number of employees potentially exposed to EDB at a minimum. The follow-up procedures such as the requirement that PPE be furnished to employees for reentry and clean up, and that the collection of EDB waste be with an absorbent nonreactive material also decrease the potential for exposure. Because of EDB's properties and its offgassing potential, EDB contaminated waste, debris, containers or equipment are required to be disposed of in sealed labeled containers to prevent dispersion of EDB outside the container and protect those who subsequently handle this waste material during disposal.

13. Paragraph (m). Medical Surveillance

The proposed standard requires that each employer institute a medical surveillance program for all employees who are exposed at or above the level for 30 or more days per year or any employee who must wear a respirator regardless of the exposure duration. The medical surveillance program must be instituted prior to the employee's initial assignment to an area where the

exposure level will be at or above the action level for 30 or more days per year, or prior to the employee's wearing of a respirator regardless of the duration of the respirator usage and annually thereafter. Providing medical surveillance for employees who will be exposed at or above the action level for a total 30 days per year is consistent with other health standards promulgated by OSHA. Since some employees may be assigned to work areas where they will be exposed to EDB at or above the action level on a temporary or a short-term basis, OSHA has instituted a cut off period for the duration of exposure which triggers the medical surveillance program. As a result of the experience gained by OSHA's in the inorganic arsenic and coke oven proceeding, the agency has determined that this cut off period should be 30 exposure days per year.

In addition, OSHA is triggering the medical surveillance program for all employees who will be required to wear a respirator. The program must be instituted prior to the employee's actual wearing of a respirator and annually thereafter. The purpose of this provision is twofold. First, it allows those individuals who will be exposed above the PEL regardless of the duration of exposure to be included in the medical surveillance program. Second, respirator usage presents an excess burden to the pulmonary system of the employee. This burden may result in symptoms such as shortness of breath, chest pain, dizziness or fatigue. All of these symptoms will be greatly exacerbated by pre-existing lung disease such as chronic bronchitis, emphysema, asthma or pneumoconiosis. It is, therefore, imperative that all employees who will be wearing respirators be medically screened to determine fitness for respirator usage. OSHA believes that the physician can best accomplish this through utilization of physical examination, including a pulmonary function test and a chest X-ray.

EDB is a potential human carcinogen causing a variety of neoplasms including stomach, nasal, and lung cancers in experimental animals. EDB is also a potential human reproductive hazard causing pathological changes in sperm and testes as well as altering the fertility status in a variety of animal models. Additionally in humans, EDB has been shown to be a potent toxin affecting the liver, kidney, skin, and nervous system. Therefore, it is extremely important to incorporate a detailed medical surveillance program in the standard. This will allow the physician to identify any adverse health effects, or biological changes which may occur in workers exposed to EDB.

All examinations and procedures are required to be performed by or under the supervision of a licensed physician, without cost to the employee. While the physician will usually be selected by the employer, the proposed standard does not so mandate, leaving the employer free to institute alternative procedures such as joint selection with the employee or selection by the employee. Clearly, the appropriate person to conduct the medical examination is a licensed physician; however, certain parts of the required examination do not necessarily require a physician's expertise and may be conducted by another person under the supervision of the physician.

The proposed standard requires that the employer provide the examining physician with certain information. This includes: (1) A copy of the regulation and appendixes B and C, (2) a description of the employee's duties as related to exposure, (3) information regarding the use of personal protective equipment and (4) examination from previous work related medical exams not otherwise available to the physician. The purpose of making this information available to the physician is to aid in the evaluation of the employee's health in relation to assigned duties and determine fitness to wear personal protective equipment when required.

The medical surveillance program in the proposed standard includes a detailed work and medical history, complete physical examination including pertinent laboratory evaluation and assessment of pulmonary status (when required).

A complete work history including any past occupational exposure to chemicals or toxic substances is necessary in implementing an effective medical surveillance program. Information regarding such past occupational exposures may alert the physician to potential adverse health effects.

In conducting the medical history, the physician must inquire as to any medication that an employee is taking. Such information is important because studies have shown that some medication, specifically disulfiram (Antabuse®), may potentiate the carcinogenic effects of EDB. OSHA recognizes the sensitivity of such information and believes that if carefully written the examining physician's written opinion will safeguard physician-patient confidentiality. OSHA solicits comments and also seeks information regarding the possible adverse health effects of any other medication in conjunction with EDB exposure. The agency also solicits information as to whether the potentiating effects of Antabuse® with EDB are seen only with concurrent exposure.

The content of the physical examination is consistent with the identification of the adverse health effects that have been associated with exposure to EDB. It should emphasize the pulmonary, neurological, gastrointestinal, genito-urinary and dermal systems. In addition, a complete assessment of pulmonary status is mandatory when a respirator is required. This assessment is accomplished through a complete examination of the head, eyes, ears, nose, throat, thorax and lungs, in addition to a pulmonary function test and a chest x-ray (initially and at 5 year intervals). The frequency of chest X-rays was determined to avoid any potential health hazards associated with frequent radiographs and at the same time provide a sufficient time interval to identify any pathological changes which may have occurred. The purpose of the pulmonary function test which include a forced vital capacity (FVC), and forced expiratory volume at one second (FEV_1) is to assist the physician in making a determination as to whether the employee is capable of wearing a respirator.

The laboratory studies required by the proposal specifically address the biological changes that may occur with EDB exposure. These include a battery of blood tests performed to measure liver function (protein, albumin, alkaline phosphatase LDH, SGOT, SGPT, GGTP, and cholesterol) and kidney function calcium, phosphorus, BUN, uric acid, creatinine) and urinalysis.

The emergency medical surveillance provisions reflect OSHA's concern for those employees who, because of equipment breakdown, container rupture or other causes, may be exposed to higher doses of EDB. These workers may be at a relatively high risk of developing delayed systemic or dermal effects and are to receive immediate medical examination followed by a medical observation period of at least 72 hours. This medical observation period is critical in that the severe and sometimes fatal toxic effects of EDB often are not manifested at the time of exposure. Such observation should take place in a medical facility, preferably a hospital, where a licensed physician will be responsible for the personal supervision of all medical care delivery.

For each examination required under this section, the employer shall obtain a written opinion from the examining physician which shall include: (1) The physician's opinion as to whether the employee has any detected medical conditions or is taking any medication which would place the employee at increased risk of material impairment from exposure to EDB, (2) any recommended limitations on the employee's exposure to EDB or upon the use of personal protection equipment. This will include an opinion as to the employee's ability to wear a respirator when it is required, and (3) a statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions resulting from EDB exposure which require further explanation or treatment.

The employer shall instruct the physician not to reveal in the written opinion given to the employer specific findings or diagnosis unrelated to occupational exposure to EDB. The employer shall provide a copy of the physician written opinion to the affected employee within 15 days of its receipt. The requirement that the employee be provided with a copy of the physician's written opinion will assure that the employee is informed of the results of the medical examination and may permit employees to take appropriate action. The purpose for requiring that specific findings or diagnosis unrelated to occupational exposure be excluded from the written opinion is to encourage employees to submit to medical examinations by removing the fear that employers may find out adverse or embarrassing information about their physical condition that may be unrelated to occupational exposures.

14. Paragraph (n). Employee Information and Training

The proposed standard requires the employer to provide a training program for employees who are exposed to EDB regardless of the level of exposure. The agency has decided it is necessary to train all exposed employees for the following reasons. OSHA believes that an information and training program is essential for the protection of employees, because employees can do much to protect themselves if informed of the nature of the hazards in the workplace. Data from the risk assessment indicates that there is still a risk of cancer, albeit a reduced risk, at the proposed PEL. In addition, EDB is highly absorptive through the skin. Skin contact with liquid EDB may increase an employee's exposure in an unquantified manner and may lead to serious health problems. Moreover, adverse reproductive effects may be linked to short term peaks. EDB is a corrosive material that may leak out of unsuitable containers. In view of the fact that the substance is colorless and odorless at levels that are many times greater than the PEL and the substance is harmful at extremely low exposure levels, employees should be trained in emergency procedures for handling EDB and should know what to look for because under some circumstances there may be unexpected and unnoticed exposures. Moreover, employees need to be informed about potentially increased risk of exposure to EDB that can result from the use of synergistic drugs, such as Antabuse®, even if exposures to EDB are low. To be effective, an employee education program must, at the minimum, apprise the employee of the specific hazards associated with the work environment. For this reason, the employer is required by the proposed standard to inform employees of the nature of EDB's potential health effects, the necessity for exposure control, safe work practices, emergency procedures, and the medical and industrial hygiene monitoring programs. Additionally, the training should be conducted relative to the employee's language and educational capability. The content of the training program is intended to apprise the employees of (1) the hazards to which they are exposed, (2) the necessary steps to protect themselves, including avoiding exposures, using respiratory protection and availing themselves of the opportunity for medical examinations, (3) their role in reducing exposure and (4) the contents of the standard.

The employer is required to provide to the Secretary and the Director, upon request, all materials relating to the training program. This is intended as an objective check of compliance with the training requirements as well as an indicator as to the adequacy of the contents of the program.

Training requirements imposed upon an employer with a constant workforce should not be too difficult to perform. Training a mobile or ever changing workforce such as truck drivers and stevedores may be very difficult. OSHA solicits comments concerning how and by whom this training can best be performed.

15. Paragraph (o). Warning Statements

Section 6(b)(7) of the Act mandates that appropriate forms of warning be used to assure that employees are apprised of the hazards to which they are exposed in the course of their employment. OSHA believes that the control of safety and health problems involve the cooperation of employees, and the success of a safety and health program is highly dependent upon the employee's understanding of the hazards involved in the job.

OSHA believes, as a matter of policy, that employees should be given the opportunity to make informed decisions as to whether to work at a job under a particular set of working conditions. Before employees can make an informed decision to work in an area with potential hazards, the employees must be informed of any unsafe conditions. This is especially important for a mobile or temporary workforce. In addition, labels on materials or containers which leave the work area must be labeled to alert those who come in contact with such contaminated objects of the hazards of EDB. In light of the serious nature of the hazard of exposure to EDB, OSHA does not believe that periodic training alone will adequately apprise employees of the health hazards of EDB. However, OSHA believes that the requirement to post warning signs and affix warning labels when coupled with the training requirements discussed above will adequately inform employees. The use of warning signs and labels accomplishes both of these purposes as it alerts the employees to hazards and promotes safer work practices.

The proposed standard includes a requirement that warnings be affixed to all containers containing EDB or products containing EDB. The warning provisions of the proposed standard also require the employer to assure that warning signs, labels or stamps are affixed to any product containing EDB which leaves the employer's workplace. This requirement is designed to protect those employees outside the initial workplace who handle, transport or use this product. When an employer manufactures, formulates or sells a product containing a toxic substance, that employer's own employees and also the employees of other employers involved in handling, transporting, or using the product are exposed to that substance. This is especially true where the manufacturer, formulator or seller will, in many cases, be the only employer capable, through unique knowledge of the substance, of providing the information needed for protection of other employees. However, OSHA recognizes that other labels required by other regulatory bodies may satisfy the intent of this provision. Therefore, this proposal allows such labels to be used as substitutes if they contain the requisite information.

Due to the hazardous nature of EDB exposure, OSHA believes that emphasis should be placed on warning employees and other persons about the dangers of exposure. The proposed standard requires that warning signs be readable and not be obstructed or diminished in any way.

16. Paragraph (p). Recordkeeping

Section 8(c) of the Act requires that each employer shall keep and make available such records as the Secretary may prescribe as necessary or appropriate for the enforcement of this Act, or for developing information regarding occupational accidents and illnesses. The proposal would require employers to maintain written records of all exposure measurements, respirator fit test and medical surveillance.

The proposal requires that an exposure monitoring record be established for each employee or job classification. Such records are necessary to assist the effective evaluation and control of EDB. The record must contain a brief description of the work operation being sampled, the methods, dates and duration of sampling; and use of personal protective equipment.

Because symptoms of disease that may be related to exposure to EDB may not appear for years following an initial exposure, the proposal requires that records of employee exposure measurements be retained for at least 30 years. Medical records must be kept for at least the duration of employment plus 30 years which is consistent with 29 CFR 1910.20 access to medical records.

The proposal's recordkeeping provisions also require that the employee records be made available for examination and copying to the Secretary, the Director of NIOSH, employees, former employees or their designated representatives.

In addition, the proposal specifies that access to exposure and medical records by employees, designated representatives, and OSHA shall be accordance with 29 CFR 1910.20. Section 1910.20 is OSHA's recently promulgated generic standard for access to employee exposure and medical records (45 FR 35212). By its terms, it applies to records required by specific standards, such as this EDB standard, as well as to records which are voluntarily created by employers. In general, it provides for unrestricted employee and designated representative access to exposure records. Access to medical records is also provided for employees and, if the employee has given specific written consent, for the employee's designated representatives. OSHA retains unrestricted access to both kinds of records as well as respirator fit testing records, but its access to personally identifiable records is made subject to rules of agency practice and procedure concerning OSHA access to employee medical records, which have been published at 29 CFR 1913.10. An extensive discussion of the provisions and rationale for § 1910.20 may be found at 45 FR 35312; the discussion of § 1910.10 may be found at 45 FR 35384. It is noted that revisions to the access to records standard are being developed in an ongoing rulemaking proceeding (45 FR 35212). The proposed EDB standard may be affected by any changes which result from that rulemaking effort.

17. Paragraph (q). Effective Date

As proposed, all sections of the standard except paragraph (g) would become effective sixty (60) days following publication of the final rule in the **Federal Register.** This will give affected employers and employees time to familiarize themselves with the regulation and its content.

The engineering and work practice controls required by paragraph (g) shall be implemented as soon as possible but no later than 2 years from the date of the final standard's publication. This is to allow effected employers sufficient time to design and install necessary control equipment. The Agency also solicits information and supporting data on "start-up periods" and delayed implementation dates which may be necessary for other provisions of the standard.

X. Conclusion

OSHA recognizes that some gaps exist in the available scientific evidence concerning chronic effects on workers exposed to EDB. OSHA believes, however, that in this case we are dealing with a chemical that is a potential human carcinogen. The existence of unanswered questions cannot be permitted to delay the regulatory process of establishing a standard for protecting workers exposed to EDB. OSHA hopes that the public participation which is invited will help to fill whatever gaps may exist.

Therefore, based upon the available evidence and in view of the above considerations, OSHA believes that employee exposures to EDB must be reduced to the level of 0.1 ppm and that the other requirements to regulate exposure to EDB must be imposed as set forth in the proposal. OSHA will evaluate all the evidence received and entered it into the public record and issue a final standard based on the entire content of that record.

Comments and data are hereby requested in response to the specific questions posed in the discussion above. In addition, interested persons are invited to submit any other relevant comments and data on any of the provisions contained in the proposal.

XI. Public Participation

Interested persons are invited to comment on the proposed standard on or before November 21, 1983. Written data, views and arguments concerning the proposal must be submitted in quadruplicate to the Docket Officer, Docket H-111, U.S. Department of Labor, Room N-3620, 200 Constitution Avenue, NW., Washington, D.C. 20210 (Telephone 202/523-8076). Written submissions must clearly identify the provisions of the proposal addressed and the position taken with respect to each such provision. The data, views and argument will be available for public inspection and copying at the above address. All written submissions received will be made a part of the record.

Pursuant to 29 CFR 1911.11 (b) and (c), interested persons may in addition to filing written comments as provided above, file objections to the proposal and request an informal hearing with respect thereto, in accordance with the following conditions

1. The objections must be postmarked on or before November 21, 1983;

3. The objectives must specify with particularity the provision of the proposed rule to which objection is taken and must state the grounds therefor;

4. Each objection must be separately stated and numbered; and

5. The objections must be accompanied by a detail summary of the evidence proposed to be adduced of the requested hearing.

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Authority

This notice was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Pursuant to sections 6(b) and 8 of the Occupational Safety and Health Act [29 U.S.C. 655, 657], is hereby proposed to amend Part 1910 of 29 CFR by adding new § 1910.1048 as set forth below and deleting the entry "20 ppm" TWA, "30 ppm" acceptable ceiling concentration and "50 ppm" acceptable maximum peak and "5 minute" maximum duration from the ethylene dibromide listing in Table Z–2 of section 1910.1000, and inserting "0.1 ppm" in the TWA column and "0.5 ppm" in the acceptable ceiling column for the ethylene dibromide entry in Table Z–2 of § 1910.1000.

In addition, pursuant to section 4(b)(2) of the Act, OSHA has determined that this new standard would be more effective than the corresponding standards now in Subpart B of Part 1910, and in Parts 1915 and 1918, of Title 29, Code of Federal Regulations. Therefore, these corresponding standards would be pre-empted by this new § 1910.1048. This determination, and the application of new standard to the maritime industry, would be implemented by adding a new paragraph (i) to § 1910.19.

List of Subjects in 29 CFR Part 1910

Ethylene dibromide, Chemicals, Cancer, Health, Health records, Occupational safety and health, Respiratory protection, Risk assessment, Signs and symbols.

(Secs. 4, 6 and 8, of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 9–83 (48 FR 35736); (29 CFR Part 1911))

Signed at Washington, D.C., this 3rd day of October 1983.

Thorne G. Auchter,

Assistant Secretary of Labor.

XII. Proposed Standards and Appendices

Part 1910 of Title 29 of the Code of Federal Regulations is proposed to be amended as follows:

1. By adding a new paragraph (h) to § 1910.19 to read as follows:

§ 1910.19 Special provisions for air contaminants.

* * * * *

(h) *Ethylene dibromide.* Section 1910.1048 shall apply to the exposure of

everyone employee to ethylene dibromide in every employment and place of employment covered by §§ 1910.13, 1910.14, 1910.15, or 1910.16, in lieu of any different standard on exposure to ethylene dibromide which would otherwise be applicable by virtue of those sections.

§ 1910.1000 [Amended]

2. By removing the entry "20 ppm" TWA, "30 ppm" acceptable ceiling concentration and "50 ppm" acceptable maximum peak and "5 minute" maximum duration from the ethylene dibromide listing in Table Z–2 of § 1910.1000 and inserting "0.1 ppm" in the TWA column and "0.5 ppm" in the acceptable ceiling concentration column for the ethylene dibromide entry in Table Z–2 of § 1910.1000.

3. By adding a new § 1910.1048 to read as follows:

§ 1910.1048 1,2 Dibromoethane (ethylene dibromide).

(a) *Scope and Application.* (1) This section applies to each place of employment which is involved in the production, reaction, release, mixing, blending, packaging, repackaging, storage, transportation, handling, distribution and use of ethylene dibromide (EDB) or products containing EDB.

(2) This section also applies to each place of employment where exposure to EDB may result from: (i) Off-gassing of fruit, vegetables, grain or packaging materials fumigated with EDB; and

(ii) The spot fumigation of milling machinery and fumigation of grain products.

(3) This section does not apply to (i) The application of EDB as a pesticide under the regulations of the Environmental Protection Agency (40 CFR Part 162);

(ii) Wholesale or retail food stores;

(iii) Automotive service stations; or

(iv) The distribution, storage, or bulk handling of leaded fuel.

(b) *Definitions.* (1) "Action level," means employee exposure to an airborne concentration of 0.05 parts EDB per million parts of air (ppm) (50 parts per billion (ppb)) averaged over an 8-hour period (TWA).

(2) "Assistant Secretary," means the Assistant Secretary of Labor for Occupational Safety and Health, or designee.

(3) "Authorized person," means any person required by work duties to be present in regulated areas and authorized to do so by the employer, by this section, or by the OSH Act of 1970.

(4) "Clean change room," means an uncontaminated room separate from the work environment where employees put on clean clothing or protective equipment.

(5) "Container," means any receptacle, excluding pipes and piping sustems, in which EDB or a liquid containing EDB is placed or kept, including reaction vessels, storage tanks and blending tanks.

(6) "Decontamination," means treatment of EDB contaminated materials by water washdown, ventilation, or other means, to assure that the contaminated materials will not expose employees to skin contact with EDB.

(7) "Director," means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

(8) "Emergency,"means any occurrence such as, but not limited to equipment failure, rupture of containers, or failure of control equipment which may result in an unexpected release of EDB or liquid containing EDB.

(9) "Employee exposure," means the exposure to EDB which would occur if the employee were not using a respirator.

(10) "Ethylene dibromide," ($C_2H_4Br_2$) (CAS Registry Number 106–93–4), means 1,2 dibromoethane (EDB) or a mixture of liquids containing EDB.

(11) "Intermittent operation," means those operations which result in exposures occurring for 1 or 2 days at any one time.

(12) "Offgassing," means the release of EDB vapors from materials or commodities previously in contact with EDB.

(13) "Regulated area," means an area where entry and exit is restricted to authorized persons.

(14) "Resistant clothing and equipment," means clothing, including gloves, aprons or boots made of materials which exhibit EDB breakthough times of greater than 480 minutes.

(15) "Short Term Exposure Limit (STEL)," means an airborne concentration to which workers exposed continuously for a short period of time cannot be exceeded. A STEL is defined as a 15-minute time-weighted average exposure which shall not be exceeded at any one time during a work day even if the 8-hour time weighted average is within the PEL.

(16) "Work practice procedures," means a written standard operating procedure by which an employee is trained to perform a task in a specific manner in order to minimize exposure.

(c) *Permissible Exposure Limit (PEL).* (1) Inhalation. (i) Time Weighted Average (TWA). The employer shall assure that no employee is exposed to an airborne concentration of EDB in excess of 0.1 parts per million parts of air (ppm) [100 parts per billion (ppb)] as an 8-hour time-weighted average;

(ii) Short Term Exposure Limit (STEL). The employer shall assure that no employee is exposed to an airborne concentration of EDB in excess of 0.5 parts per million parts of air (ppm) [500 parts per billion (ppb)] as-average over any 15-minute period during the work shift.

(2) Dermal exposure. The employer shall take adequate precautions to insure that no employee is exposed to skin or eye contact with EDB.

(d) *Regulated Areas.* (1) The employer shall establish a regulated area whenever the airborne concentration of EDB is at or above the action level.

(2) Access to regulated areas shall be limited to authorized persons.

(3) The employer shall assure that employees do not eat, smoke, drink or apply cosmetics in a regulated area.

(4) The employer shall post regulated areas with signs containing the following information:

DANGER, (TRADE NAME) CONTAINS ETHYLENE DIBROMIDE (EDB) CANCER AND REPRODUCTIVE HAZARD, AUTHORIZED PERSONNEL ONLY. RESPIRATOR MAY BE REQUIRED

(5) Whenever an employer at a multi-employer worksite establishes a regulated area, that employer shall communicate to other employers at that worksite the location and access restrictions to the regulated area.

(e) *Exposure Monitoring.* (1) General. Each employer who has a workplace covered by this standard, shall measure and accurately determine employee exposure to EDB. Determination of airborne exposure levels shall be made from air samples that are representative of each employee's full shift and short term exposure to airborne EDB.

(2) Seasonal and Intermittent Exposures. (i) At least annually, each employer who has a work operation covered by this standard shall monitor employee exposure to accurately determine the airborne concentration of EDB to which employees may be exposed.

(A) For exposures during seasonal operations, initial monitoring shall be performed within 30 days of the startup or the first introduction of EDB into a work area.

(B) For intermittent exposures, the initital monitoring shall be performed within 30 days of the introduction of

EDB into the work area even if exposures are not daily.

(ii) If the monitoring required by this section reveals employee exposures to be in excess of the PEL, the employer shall repeat measurements of samples representative of each such employee's exposure at least every six months.

(iii) The employer shall promptly monitor and redetermine employee exposure whenever there has been a production, process or control change which may result in new or additional exposure to EDB or whenever the employer has any reason to suspect new or additional EDB exposure.

(3) Other Exposures. (i) Initial Monitoring.

(A) Each employer who has a work operation covered by this standard shall monitor employee exposures to EDB to determine whether any employees are exposed to EDB at or above the action level.

(b) Initial exposure monitoring shall be done within 60 days of an employer's first introduction of EDB into the work area.

(ii) Frequency of monitoring.

(A) If any monitoring reveals employee exposure to be above the action level but below the PEL, the employer shall repeat measurements of samples representative of each such employee's exposure at least annually.

(B) If any monitoring reveals employee exposures to be in excess of the PEL, the employers shall repeat measurements of samples representative of each such employee's exposure at least every six months.

(C) The employer shall remonitor and redetermine employee exposure within 15 days of any change in production, process, or control measures which may result in new or additional employee exposure to EDB.

(iii) Termination of monitoring. If the monitoring reveals employee exposure to be below the action level, the measurements need not be repeated except where there has been a production, process or control change which may result in new or additional exposure to EDB.

(4) Employee Notification. (i) Within 15 working days after the receipt of exposure monitoring results, the employer shall notify each employee of the monitoring results which represent that employee's exposure to EDB.

(ii) Whenever monitoring results indicate that employee exposure exceeds the PEL, the employer shall assure that each such employee receives a written notice informing the employee of the monitoring results along with a statement that the PEL was exceeded and a description of any corrective action being taken to reduce exposure to or below the PEL.

(iii) Where employees do not always report to the same work location, such as in stevedoring, and the employer is unable to notify the employee directly of the monitoring results, the employer shall provide the results of the exposure monitoring to the employee's authorized representative for distribution to affected employees.

(5) Accuracy of Measurement. The employer shall use a method of measurement which has an accuracy (with a confidence level of 95 percent) of not less than plus or minus 25 percent for concentrations of EDB at the action level.

(f) *Observation of monitoring.* (1) The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to EDB required by this standard.

(2) When observation of the monitoring of employee exposure to EDB requires entry into an area where the use of protective clothing or equipment is required, the observer shall be provided with and be required to use such clothing and equipment and shall comply with all other applicable safety and health procedures.

(g) *Methods of Compliance.* (1) General. (i) The employer shall institute engineering and work practice controls to reduce and maintain employee exposures to EDB at or below the PEL, except to the extent that the employer establishes that such controls are not feasible. Where work practice controls are sufficient to accomplish this goal alone, engineering controls need not be implemented.

(ii) Where engineering and work practice controls are not sufficient to reduce exposures to or below the PEL, they shall nonetheless be used to reduce exposures to the lowest levels achievable by these controls and shall be supplemented by the use of respirators in accordance with paragraph (h) of this section. Respiratory protection may be instituted prior to the imposition of employee rotation as a control strategy.

(iii) Exception: Where exposure to EDB in a workplace is intermittent and occurs less than a total of 30 days per year the employer may use engineering controls, work practice controls or respiratory protection to reduce employee exposure to EDB in the workplace to or below the PEL.

(2) Specific. Employers shall institute work practice controls (such as aerating or venting of truck trailers or chimney stacking cartons) whenever feasible to reduce exposure to EDB of the first line receivers of fumigated commodities to or below the PEL.

(h) *Respiratory Protection.* (1) General. Where respiratory protection is required, the employer shall provide at no cost to the employee and assure the use of respirators which comply with the requirements of this paragraph to reduce employee exposures to or below the PEL.

(2) Respirators shall be used in the following circumstances: (i) In work situations in which engineering and work practice controls are not feasible to reduce exposures to or below the PEL; and

TABLE 1—RESPIRATORY PROTECTION FOR EDB

Concentrations of airborne EDB or condition of use	Respirator type [1]
(A Not greater than 1.0 ppm. (1000 ppb).	1. A half mask or full face air-purifying respirator equipped with an organic vapor pesticide cartridge or canister; 2. Any supplied air respirator; or 3. Any self-contained breathing apparatus.
(B) Not greater than 5.0 ppm. (5000 ppb).	1. A full face air-purifying respirator equipped with an organic vapor or pesticide canister; 2. Any supplied-air respirator with full facepiece, helmet, or hood; or 3. Any self-contained breathing apparatus with full facepiece.
(C) Not greater than 100 ppm. (100,000 ppb).	A Type C supplied-air respirator with full facepiece operated in pressure-demand or other positive pressure mode, or with full facepiece, helmet, or hood operated in continuous flow mode.
(D) Greater than 100 ppm or entry and escape from unknown concentrations.	1. A combination respirator which includes a Type C supplied-air respirator with full facepiece operated in pressure-demand or other positive pressure or continuous flow mode and an auxiliary self-contained breathing apparatus operated in pressure-demand or positive pressure mode; or 2. A self-contained breathing apparatus with full facepiece operated in pressure-demand mode. 3. Supplied-air suits may be necessary.
(E) Firefighting	A self-contained breathing apparatus with full facepiece operated in pressure-demand mode.

[1] Respirators specified for higher concentrations can be used for lower concentrations of EDB.

(ii) During the time period necessary to install or implement feasible engineering and work practice controls; and

(iii) Where workplace exposures to EDB are intermittent and EDB is used within the workplace less than a total of 30 days per year and engineering and work practice controls are not used to reduce exposure; and

(iv) In emergencies;

(2) Respirator Selection. (i) Where respiratory protection is required or

used to comply with this section, the employer shall select and assure that employees use the appropriate respirator in accordance with Table 1.

(ii) The employer shall select respirators from among those approved for use with organic vapors or pesticides by the National Institute for Occupational Safety and Health (NIOSH) under 30 CFR Part 11.

(3) Respirator Program. The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e), and (f). Compliance with 1910.134(b)(10) shall consist of those specifications outlined in the medical surveillance section of this standard.

(4) Respirator Usage. (i) The employer shall perform and record the results of either quantitative or qualitative fit tests at the time of initial fitting and at least annually thereafter for each employee wearing a negative pressure respirator. The test shall be used to select a respirator facepiece which exhibits minimum leakage and provides the required protection as prescribed in Table 1.

(ii) The employer shall follow the test procedures outlined in Appendix A of this regulation when performing qualitative fit tests.

(iii) Where air-purifying chemical cartridge respirators are used, the air purifying cartridges shall be replaced at the completion of each shift.

(iv) Where air-purifying canister type respirators are used, the air-purifying canister shall be replaced at the completion of two work shifts within one 48-hour period. A label shall be attached to the canister to indicate the date and time at which it was first installed on the respirator.

(v) Employees who wear respirators shall be permitted to leave work areas to wash their face and respirator facepiece whenever necessary to prevent skin irritation associated with respirator usage.

(i) *Protective Clothing and Equipment.* (1) Provision and Use. Where there is the possibility of eye or skin contact with EDB or liquids containing EDB: (i) The employer shall provide at no cost to the employee and assure that the employee uses appropriate resistant clothing and equipment to protect the area of the body which may come into contact with liquid EDB such as:

(A) Full body protective clothing;

(B) Gloves, boots, head and neck coverings;

(C) Face shields, vented goggles, or other protective equipment;

(ii) Resistant clothing (suits) and supplied-air hoods shall be worn when entering confined spaces, such as storage tanks or reactor vessels.

(iii) All personal protective equipment provided shall comply with the provisions of 29 CFR 1910.132 and 1910.133.

(iv) Quick drench showers and eye wash fountains shall be provided within the work area for immediate emergency use.

(2) Removal and Storage. (i) Where resistant protective clothing is required it shall be removed at the end of each work shift and shall not be reworn until it has been decontaminated.

(ii) EDB-contaminated clothing and protective devices shall be stored, until they are decontaminated, in closed containers bearing a warning which contains the following information:

DANGER; (TRADE NAME) CONTAINS ETHYLENE DIBROMIDE (EDB); CANCER AND REPRODUCTIVE HAZARD; AVOID INHALATION AND SKIN CONTACT

(iii) The employer shall assure that no employee takes home EDB contaminated work clothing or equipment.

(3) Cleaning and Replacement. (i) The employer shall clean, launder, repair, or replace all required protective clothing and equipment for each affected employee as necessary to assure its effectiveness.

(ii) The employer shall assure that only trained persons remove protective clothing and equipment from the storage containers for the purpose of laundering, maintenance, or disposal.

(iii) The employer shall inform any person who launders or cleans EDB-contaminated protective clothing or equipment of the potentially harmful effects of EDB.

(j) *Hygiene Facilities and Practices.* (1) The employer shall assure that exposed employees wash hands and face with soap and water prior to eating, drinking, smoking or applying of cosmetics.

(2) Where employees are required to wear protective clothing to prevent skin or eye contact with EBD, clean change rooms and shower facilities, as described in 29 CFR 1910.141 shall be furnished by the employer for use by affected employees. The clean change room shall be contiguous to and have an entry from a shower room.

(3) The employer shall assure that employees wearing protective clothing or equipment to protect against skin contact with liquid EDB shower at the end of the work shift.

(k) *Housekeeping.* (1) All surfaces shall be maintained free of drips or spills of EDB.

(2) The employer shall institute a program for detecting leaks and spills including regular visual inspections of operations involving liquid EDB.

(3) All leaks shall be repaired and spills cleaned up promptly.

(l) *Emergency Procedures.* (1) In all work areas where EDB is present, the employer shall take all necessary steps to ensure that employees are instructed in and follow specific written emergency procedures appropriate for each operation or process which have been developed by the employer.

(2) The written emergency procedures shall include: (i) Prearranged plans for immediate evacuation, transportation, and medical assistance for affected employees;

(ii) Designation of medical receiving facilities and names of physicians to contact in the event of an EDB emergency;

(iii) Reentry procedures for cleanup, or maintenance into areas where EDB leaks or spills have occurred; and

(iv) Selection of the appropriate personal protective equipment and clothing which shall be used by trained personnel during an emergency.

(3) In the event of skin or eye contact with liquid EDB the employer shall assure that affected employees immediately wash or shower to minimize the danger of skin absorption.

(4) The employer shall require that employees immediately remove any nonresistant clothing which becomes wet with EDB or liquids containing EDB. Such clothing shall be stored in closed containers and shall not be reworn until it has been decontaminated.

(5) All employees, except those designated to correct the situation, shall be evacuated from the area where the emergency occurred until cleanup has been completed.

(6) Personnel reentering the spill or leak area shall be furnished with appropriate personal protective equipment.

(7) Any spilled or leaked EDB shall be collected by using vermiculite, dry sand, earth or other nonreactive material.

(8) EDB contaminated waste and debris shall be disposed of in sealed containers which prevent dispersion of EDB outside the container. (i) Such containers shall bear a warning containing the following information:

DANGER (TRADE NAME) CONTAINS ETHYLENE DIBROMIDE (EDB) CANCER AND REPRODUCTIVE HAZARD AVOID INHALATION AND SKIN CONTACT

(ii) Spent or leaking containers shall be promptly removed from the workpiece.

(m) *Medical Surveillance.* (1) General. (i) The employer shall make available a medical surveillance program for any employee required to wear a respirator or any employee exposed to EDB at or above the action level for a total of 30 or more days per year.

(ii) All medical examinations and procedures shall be performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee, without loss of pay and at a reasonable time and place.

(2) Frequency and content. Before an employee can wear a respirator or at the time of initial assignment to an area where the employee is likely to be exposed at or above the action level for 30 days or more per year and at least annually thereafter, the employer shall provide that employee a medical examination. The medical examination shall include the following:

(i) A comprehensive work history with inquiry directed toward previous work-related exposure to toxic substances.

(ii) A comprehensive medical history with special emphasis directed to disorders of the liver, kidney, lungs and reproductive system.

(iii) A comprehensive physical examination, with particular emphasis given to the cardiovascular, pulmonary, neurologic, hepatic, renal and dermal system.

(iv) Laboratory examinations: Blood serum chemistry studies including, calcium, phosphorus, glucose, blood urea nitrogen, serum creatinine, uric acid, cholesterol, total protein, albumin, alkaline phosphatase, LDH, SGOT, SGPT, and GGTP; urinalysis,

(v) A chest X-ray, initially and at five year intervals, unless indicated more frequently by the examining physician, and a pulmonary function test, including FVC and FEV_1, if an employee is to wear a respirator; and

(vi) Any other test deemed appropriate by the examining physician after review of the above medical information.

(3) Special Examinations. If an employee is exposed to EDB in an emergency situation or develops signs or symptoms commonly associated with EDB exposure, the employer shall immediately provide the employee with a medical examination. This examination shall include those elements considered appropriate by the examining physician, and a 72-hour medical observation period to assure that the unexpected delayed systemic effects associated with acute exposure are minimized.

(4) Information provided to the physician. The employer shall provide the following information to the examining physician:

(i) A copy of this regulation and appendices B and C;

(ii) A description of the affected employee's duties as they relate to the employee's exposure to EDB;

(iii) The level of EDB to which the employee is exposed;

(iv) A description of any personal protective equipment used; and

(v) Information from previous employment-related medical examinations of the affected employee which is not otherwise available to the examining physician.

(5) Physician's written opinion. (i) For each examination required under this section, the employer shall obtain a written opinion from the examining physician which shall include:

(A) The physician's opinion as to whether the employee has any detected medical conditions or is taking any medication which would place the employee at increased risk of material impairment from exposure to EDB;

(B) Any recommended limitation on the employee's exposure to EDB or upon the use of personal protective equipment. This shall include an opinion as to the employee's ability to wear a respirator; and

(C) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions resulting from EDB exposure which require further explanation or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion given to the employer specific findings or diagnosis unrelated to occupational exposure.

(iii) The employer shall provide a copy of the physician's written opinion to the affected employee within 15 days of its receipt.

(n) *Employee Information and Training.* (1) The employer shall assure that all employees who are assigned to workplaces covered by this standard participate in a training program.

(2) Training shall be provided prior to or at the time of initial assignment and at least annually thereafter.

(3) The training program shall be conducted in a manner which the employee is able to understand and shall include: (i) A copy of this regulation and discussion of its contents and Appendix B;

(ii) The potential health effects associated with exposure to EDB with emphasis on the potential for serious internal injury before experiencing overt symptoms;

(iii) Instructions to immediately report to the employer the development of signs or symptoms of EDB exposure;

(iv) The safe work practices appropriate to each job with EDB exposure;

(v) The purpose for, proper use and limitations of personal protective clothing and equipment;

(vi) Instructions for the handling of spills, emergency and cleanup procedures;

(vii) The purpose for and a description of the medical surveillance program required by this standard; and

(viii) An explanation of the importance of engineering and work practice controls for employee protection and any necessary instruction in the use of these controls.

(4) Access to training materials. (i) The employer shall make readily available, without cost, to all affected employees all written materials relating to the employee training program.

(ii) The employer shall provide upon request, all information and training materials relating to the employee information and training program to the Assistant Secretary and the Director.

(o) *Warning Statements.* (1) The employer shall assure that precautionary warnings are affixed to all containers of liquids containing EDB within the workplace.

(2) The employer shall assure that the precautionary warnings are affixed when the materials are sold, distributed, or otherwise leave the employer's workplace.

(3) Substitute Warning Labels. (i) The employer may use warning labels required by other statutes, regulations, or ordinances which impart the same information as the warning statements required by this paragraph.

(A) The employer shall assure that no statement appears on or near any warning information required by this section which contradicts or detracts from the meaning of the required warning.

(B) The employer shall assure that required warning statements are readily visible and legible

(ii) The warning statement shall contain the following information:

DANGER (TRADE NAME) CONTAINS ETHYLENE DIBROMIDE (EDB) CANCER AND REPRODUCTIVE HAZARD. AVOID INHALATION AND SKIN CONTACT

(p) *Recordkeeping.* (1) Exposure monitoring. (i) The employer shall establish an maintain an accurate record of all monitoring required by paragraph (e) of this section.

(ii) This record shall include:

(A) The date(s), number, duration, location and results of each of the samples taken.

(B) The operation involving exposure to EDB which is being monitored;

(C) Name, social security number and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent;

(D) Where representative samples are used to document employee exposure, an explanation of why they are characteristic of that employee's exposure.

(E) The type of respiratory protection and other personal protective devices worn, if any; and

(F) A description of the sampling and analytical methods used and evidence of their accuracy.

(2) Medical Surveillance. (i) The employer shall establish and maintain accurate records for each employee subject to medical surveillance required by this standard.

(ii) This record shall include:

(A) The name, social security number and description of the duties of the employee;

(B) A copy of the physician's written opinion;

(C) Results of employee's exposure; and

(D) Any employee medical complaints related to exposure to EDB.

(iii) The employer shall keep the following medical records:

(A) A copy of the medical examination results including the medical and work history required by this section;

(B) A copy of the test results.

(3) Respirator Fit Testing. (i) The employer shall establish and maintain accurate records for each employee subject to negative pressure respirator fit testing required by this standard.

(ii) This record shall include:

(A) A copy of the protocol for either the quantitative or qualitative procedure(s) selected for respirator fit testing.

(B) A copy of the results of any quantitative fit testing performed.

(C) The size and manufacturer types of respirators available for selection.

(D) The type and facepiece selected for the employee.

(E) The date of the most recent fit testing.

(F) The name, social security number, and a description of the duties of tested employee.

(4) Record Retention. The employer shall retain records required by this standard for at least the following periods: (i) Exposure records shall be kept for 30 years.

(ii) Medical records shall be kept for the duration of employment plus 30 years.

(iii) Respirator fit test records shall be kept for 1 year or until replaced with a more recent record.

(iv) Records required by this standard shall be maintained in accordance with 29 CFR 1910.20.

(5) Availability. (i) The employer shall assure that all records to be maintained by this section be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) Employee exposure monitoring records required by this paragraph shall be provided upon request for examination and copying to employees, employee representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(i).

(iii) Employee medical records required by this pragraph shall be provided upon request for examination and copying, to the subject employee, to anyone having the specific written consent of the subject employee, and to the Assistant Secretary.

(6) Transfer of records. (i) The employer shall comply with the requirements involving transfer of records set forth in 29 CFR 1019.20(h).

(ii) If the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall transmit these records by mail to the Director.

(q) *Effective Dates.* (1) Paragraph (a) through (q) of this section shall become effective sixty (60) days following publication of the final rule unless noted below.

(2) Measurements representative of employee esposure to EDB taken in the preceding six months may be used to fulfill the initial monitoring requirement provided the sampling and analytical methods used meet the accuracy and confidence levels required by this paragraph.

(3) Engineering and work practice controls required by paragraph (g) of this section shall be implemented as soon as possible but no later than 2 years after the effective date of the final rule.

(r) *Appendices.* (1) The information and procedures contained in Appendix A is mandatory.

(2) The information contained in the subsequent appendices B, C, and D to this section is not intended by itself, to create any additional obligations not otherwise imposed by this standard nor detract from any existing obligations.

Appendix A—To Section 1910.1048—Qualitative Fit Test Protocols

This appendix specifies the only allowable qualitative fit test protocols permissible for compliance with 29 CFR 1910.1048(h)(4)(ii) and must be used with negative pressure respirators if quantitative fit testing is not used.

I. Isoamyl Acetate Protocol

A. Odor Threshold Screening

1. Three 1-liter glass jars with metal lids (e.g. Mason or Bell jars) are required.

2. Odor-free water (e.g. distilled or spring water) at approximately 25° C shall be used for the solutions.

3. The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor free water in a 1-liter jar and shaking for 30 seconds. This solution shall be prepared new at least weekly.

4. The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but shall not be connected to the same recirculating ventilation system.

5. The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clean dropper or pipette. Shake for 30 seconds and allow to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution may be used for only one day.

6. A test blank is prepared in a third jar by adding 500 cc of odor free water.

7. The odor test and test blank jars shall be labelled 1 and 2 for jar identification. If the labels are put on the lids they can be periodically peeled, dried off and switched to maintain the integrity of the test.

8. The following instructions shall be typed on a card and placed on the table in front of the two test jars (i.e. 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

9. The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

10. If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test may not be used.

1. If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

B. Respirator Selection

1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various

sizes from different manufacturers. The selection shall include at least three sizes of elastomeric half facepieces and units from at least two manufacturers.

2. The selection process shall be conducted in a room separate from the fit-test chamber to prevent odor fatigue. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine a "comfortable" respirator. A mirror shall be available to assist the subject in evaluating the fit and positioning of the respirator. This instruction may not constitute the subjects formal training on respirator use, as it is only a review.

3. The test subject should understand that the employee is being asked to select the respirator which provides the most comfortable fit. Each respirator represents a different size and shape and, if fit properly and used properly will provide adequate protection.

4. The test subject holds each facepiece up to the face and eliminates those which obviously do not give a comfortable fit. Normally, selection will begin with a half-mask and if a good fit cannot be found, the subject will be asked to test the full facepiece respirators. (A small percentage of users will not be able to wear any half-mask.)

5. The more comfortable facepieces are noted; the most comfortable mask is donned and *worn at least five minutes* to assess comfort. Assistance in assessing comfort can be given by discussing the points in #6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator:

- Positioning of mask on nose.
- Room for eye protection.
- Room to talk.
- Positioning mask on face and cheeks.

7. The following cirteria shall be used to help determine the adequacy of the respirator fit:

- Chin properly placed.
- Strap tension.
- Fit across nose bridge.
- Distance from nose to chin.
- Tendency to slip.
- Self-observation in mirror.

8. The test subject shall conduct the conventional negative and positive-pressure fit checks (e.g. see ANSI Z88.2–1980). Before conducting the negative- or positive-pressure test the subject shall be told to "seat" the mask by rapidly moving the head from side-to-side and up and down, while taking a few deep breaths.

9. The test subject is now ready for fit testing.

10. After passing the fit test, the test subject shall be questioned again regarding the comfort of the respirator. If it has become uncomfortable, another model of respirator shall be tried.

11. The employee shall be given the opportunity to select a different facepiece and be retested if the chosen facepiece becomes increasingly uncomfortable at any time.

C. Fit Test

1. The fit test chamber shall be similar to a clear 55 gal drum liner suspended inverted over a 2 foot diameter frame, so that the top of chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

2. Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

3. After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for order threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

4. A copy of the following test exercises and rainbow passage shall be taped to the inside of the test chamber:

Test Exercises

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular.*

iii. Turn head all the way from one side to the other. Inhale on each side. Be certain movement is complete. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Inhale when head is in the full up position (looking toward ceiling). Be certain motions are complete and made about every second. Do not bump the respirator on the chest.

v. Read the Rainbow passage. Be certain to read aloud and slowly.

vi. Breathe normally.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends says he is looking for the pot of gold at the end of the rainbow.

5. Each test subject shall wear the respirator for at least 10 minutes before starting the fit test.

6. Upon entering the test chamber, the test subject shall be given a 6 inch by 5 inch piece of paper towel or other porous absorbent single ply material, folded in half and wetted with three-quarters of one cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

7. Allow two minutes for the IAA test concentration to be reached before starting the fit-test exercises. This would be an appropriate time to talk with the test subject, to explain the fit test, the importance of cooperation, the purpose for the head exercises, or to demonstrate some of the exercises.

8. Each exercise described in #4 above shall be performed for at least one minute.

9. If at any time during the test, the subject detects the banana-like odor of IAA, the test has failed, the subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

10. If the test is failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber, and again begin the procedure described in the c(4) through c(8) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

11. If a person cannot pass the fit test described above wearing a half-mask respirator from the available selection, full facepiece models must be used.

12. When a respirator is found that passes the test, the subject breaks the faceseal and takes a breath before exiting the chamber. This is to assure that the reason the test subject is not smelling the IAA is the good fit of the respirator facepiece seal and not olfactory fatigue.

13. When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the area from becoming contaminated, the used towels shall be kept in a self-sealing bag so there is no significant IAA concentration buildup in the test chamber during subsequent tests.

14. Persons who have successfully passed this fit test with a half-mask respirator may be assigned the use of the test respirator in atmospheres with up to 10 times the PEL of airborne EDB. In atmospheres greater than 10 times, and less than 100 times the PEL (up to 10 ppm), the subject must pass the IAA test using a full face negative pressure respirator.

II. Saccharin Solution Aerosol Protocol

A. Respirator Selection

Respirators shall be selected as described in section IB (respirator selection) above, except that each respirator shall be equipped with a particulate filter cartridge.

B. Taste Threshold Screening

An enclosure about head and shoulders shall be used for threshold screening (to determine if the individual can taste saccharin) and for fit testing. The enclosure shall be approximately 12 inches in diameter by 14 inches tall with at least the front clear to allow free movement of the head when a respirator is worn.

2. The test enclosure shall have a three-quarter inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

3. The entire screening and testing procedure shall be explained to the test subject prior to conducting the screening test.

4. During the threshold screening test, the test subject shall don the test enclosure and

breathe with open mouth with tongue extended.

5. Using a DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, the test Conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

6. The threshold check solution consists of 0.83 grams of sodium saccharin, USP in water. It can be prepared by putting 1 cc of the test solution (see C6 below) in 100 cc of water.

7. To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then is released and allowed to fully expand.

8. Ten squeezes of the nebulizer bulb are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

9. If the first response is negative, ten more squeezes of the nebulizer bulb are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

10. If the second response is negative ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

11. The test conductor will take note of the number of squeezes required to elicit a taste response.

12. If the saccharin is not tasted after 30 squeezes (Step 10), the saccharin fit test cannot be performed on the test subject.

13. If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

14. Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

15. The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least every four hours. *C. Fit Test*

1. The fit test uses the same enclosure described in IIB above.

2. Each test subject shall wear the respirator for a least 10 minutes before starting the fit test.

3. The test subject shall don the enclosure while wearing the respirator selected in section IB above. This respirator shall be properly adjusted and equipped with a particulate filter cartridge.

4. The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

5. A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

6. The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

7. As before, the test subject shall breathe with mouth open and tongue extended.

8. The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same technique as for the taste threshold screening and the same number of squeezes required to elicit a taste response in the screening. (See B8 through B10 above).

9. After generation of the aerosol read the following instructions to the test subject. The test subject shall perform the exercises for one minute each.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular*.

iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete. Inhale when head is in the full up position (when looking toward the ceiling). Do not to bump the repirator on the chest.

v. Read the Rainbow Passage. Be certain to read aloud and slowly.

vi. Breathe normally.

10. The Rainbow Passage as given below shall be printed on a card so the test subject may read it.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

11. At the beginning of each exercise, the aerosol concentration shall be replenished using one-half the number of squeezes as initially described in C8.

12. The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

13. If the saccharin is detected the fit is deemed unsatisfactory and a different respirator shall be tried.

14. Successful completion of the test protocol shall allow the use of the tested respirator in contaminated atmospheres up to 10 times the PEL. In other words this protocol may be used assign protection factors no higher than ten.

III. Irritant Fume Protocol

A. Respirators Shall Be Selected as Described in Section IB Above, Except That Each Respirator Shall be Equipped With High-Efficiency Acid-Gas Organic Vapor Cartridges

B. Fit Test

1. The test subject shall be allowed to smell a weak concentration of the irritant smoke to familiarize the subject with the characteristic odor.

2. The test subject shall properly don the respirator selected as above, and wear it for at least 10 minutes before starting the fit test.

3. The test conductor shall review this protocol with the test subject before testing.

4. The test subject shall perform the conventional positive pressure and negative pressure fit checks (see ANSI Z88.2 1980). Failure of either check shall be cause to select an alternate respirator.

5. Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part #5645, or equivalent. Attach a short length of tubing to one end of the smoke tube. Attach the other end of the smoke tube to a low pressure air pump set to deliver 200 milliliters per minute.

6. Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep the eyes closed while the test is performed.

7. The test conductor shall direct the stream of irritant smoke from the tube towards the faceseal area of the test subject. The person conducting the test shall begin with the tube at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

8. The test subject shall be instructed to do the following exercises while the respirator is being challenged by the smoke. Each exercise shall be performed for one minute.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular*.

iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete and made every second. Inhale when head is in the full up position (looking toward ceiling). Do not bump the respirator against the chest.

v. Slowly and distinctly, count backwards from 100.

vi. Breathe normally.

9. The test subject shall indicate to the test conductor if the irritant smoke is detected. If smoke is detected, the test conductor shall stop the test. In this case, the tested respirator is rejected and another respirator shall be selected.

10. Each test subject passing the smoke test (i.e. without detecting the smoke) shall be given a sensitivity check of smoke from the same tube to determine if the test subject reacts to the smoke. Failure to evoke a response shall void the fit test.

11. Steps B4, B9, B10 of the fit test protocol shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agents.

12. Respirators succesfully tested by the protocol may be used in contaminated atmospheres up to ten times the PEL.

Appendix B—To Section 1019.1048—Technical Data for Ethylene Dibromide

I. Physical and Chemical Data

A. Substance Identification

1. Synonyms: Aadibroom, bromofume, celmide, dibromethane, 1,2-dibromoethane, sym-dibromoethane, Dowfume EDB, Dowfume MC–2, Dowfume W–8, Dowfume W–85, Dowfume 40, E–D–BEE, EDB, EDB–85, ENT 15,349, ethylene dibromide, Fume-Gas, glycol dibromide, Isobromo D, Kopfume, Nefis, Pestmaster, Pestmaster EDB—85, Sanhyuum, Soilbrum-40, Soilbrum-85, Soilfume, Unifume.

2. Formula: Ch_2BrCH_2Br.

3. Molecular Weight: 187.9.

B. Physical Data

1. Boiling Point (760 mm Hg): 131° C (268° F).
2. Melting Point 9.6° C. (47.2° F).
3. Specific Gravity (Water=1) 2.18.
4. Vapor Density (Air=1 at boiling point of EDB): 6.5.
5. Vapor pressure at 20° C (68° F): 11 mm Hg.
6. Solubility in water, % by weight at 20° C (68° F): 0.4.
7. Appearance and odor: Colorless liquid or solid with a mild, sweet odor at high concentrations.
8. Odor Threshold: 10 parts per million.

II. Fire, Explosion, and Reactivity Hazard Data

A. Fire: Not Combustible

B. Reactivity

1. Conditions contributing to instability: High temperature; ethylene dibromide slowly decomposes in the presence of light.
2. Hazardous decomposition products: Toxic gases and vapors (such as hydrogen bromide, bromine, and carbon monoxide) may be released when ethylene dibromide decomposes.
3. Incompatibilities: Reacts with chemically active metals, such as sodium, potassium, calcium, powdered aluminum, magnesium and zinc; strong alkalies, and oxidizing agents; Reacts with certain metals, such as aluminum and magnesium to form combustible and explosive organometallic compounds and liquid ammonia.
4. Special precautions: Liquid ethylene dibromide will attack some forms of plastic, rubber, and coatings.

III. Spill, Leak, and Disposal Precedures

A. If ethylene dibromide leaks or is spilled, the following steps should be taken:

(1) Evacuate all non-essential personnel from the area.

(2) Ventilate the area of the spill or leak to prevent accumulation of the vapor.

(3) If in liquid form, collect spilled material for reclamation or absorb in vermiculite, dry sand, earth, or similar nonreactive material.

B. Personnel entering the spill or leak area shall be furnished the appropriate personal protective equipment. All other people shall be excluded from the area.

C. EDB contaminated waste, debris, containers, or equipment shall be disposed of in sealed, labeled containers which prevent dispersion of EDB outside the container.

IV. Health Hazard Data

A. Route of Entry

Inhalation is the most common source of occupational exposure to ethylene dibromide. EDB may also be absorbed through the skin after direct contact with either the liquid or vapor. It is also readily absorbed from the gastrointestinal tract after being ingested. It is, therefore important to maintain good personal hygiene and housekeeping practices when working with EDB.

B. Adverse Health Effects

1. Acute Effects

Immediate.—EDB is an irritant to the eyes, respiratory tract and mucous membranes; inhalation exposure in humans has been associated with headache, decreased appetite, inability to sleep, nausea, and dizziness. Dermal contact may result in intense burning pain, swelling and blistering. Repeated contact may cause skin sensitization.

Delayed.—Although the acute symptoms may subside, loss of consciousness and death due to liver and kidney failure have occurred twelve to seventy-two hours after an acute exposure to EDB. Therefore, it is very important to immediately report all acute exposures to EDB.

2. Chronic Effects

EDB has the potential for causing cancer and adverse reproductive effects in humans. These effects have been demonstrated in various animal experiments which show EDB to be a potent cancer agent and reproductive toxin.

V. Monitoring and Measurement Procedures

A. Eight-hour exposure evaluation: The average 8-hour employee exposure may be determined from two (2) 4-hour samples. Air samples should be taken in the employee's breathing zone.

B. Short Term Exposure Limit (STEL) Evaluation: Measurements taken for the purpose of determining employee exposure under this section must be taken during periods of maximum expected airborne concentrations of EDB in the employee's breathing zone. The sampling time for STEL evaluation is fifteen (15) minutes.

C. Monitoring techniques: The employer shall use a method of exposure measurement which has an accuracy (with a confidence level of 95%) of not less than plus or minus 25 percent for concentrations of EDB at the action level of 0.05 ppm.

D. Sampling and analysis under this section may be performed by collecting EDB on charcoal absorption tubes with subsequent chemical analysis by gas chromatograph. This Appendix D contains a method for EDB analysis which has been tested by OSHA at concentrations below 0.1 ppm.

VI. Medical Surveillance

A. Periodic

A medical surveillance program shall be provided by the employer at no expense to all employees who are exposed to EDB at or above the action level for 30 or more days per year or those employees required to wear a respirator regardless of the duration of exposure. The program shall be administered at the time of initial assignment and annually thereafter.

It shall consist of:

(a) A detailed work and medical history.

(b) A complete physical examination.

(c) Pertinent laboratory examination to ascertain liver, kidney and other abnormalities associated with EDB exposure.

In addition for those employees required to wear a respirator, the medical surveillance program shall include an assessment of pulmonary status which will include a chest X-ray initially and every 5 years (unless indicated more frequently by the examining physician) and a pulmonary function test.

Medical surveillance can play a very important role in protecting employee's health. All employees are encouraged strongly to participate. The employer shall provide the following information to the physician:

(1) a description of the employee's duties as they relate to ethylene dibromide exposure;

(2) the exposure level;

(3) a description of the personal protective equipment the employee is required to wear; and

(4) the results of prior medical examinations and opinions concerning the employee's health.

After a medical examination the physician must prepare a written report containing:

(1) the physician's opinion as to whether the employee has any medical condition which places that employee at an increased risk of material impairment to health from exposure to ethylene dibromide;

(2) any recommended special protective measures to be provided; and

(3) any recommended limitation on the use of respirators.

B. Additional

Medical consultation must be made available as soon as possible if the employee is experiencing signs or symptoms of EDB poisoning.

C. Emergency

In the event that an employee is exposed to EDB in an emergency situation or develops signs or symptoms associated with acute toxicity from EDB exposure, the employer shall immediately provide the employee with a medical examination. This examination shall include all the steps necessary to stabilize the health of the employee and a 72 hour medical observation period to assure that the often unexpected, serious, delayed systemic effects from acute exposure are minimized.

Appendix C—To Section 1019.1048—Medical Surveillance Guidelines for Ethylene Dibromide

I. Introduction

The primary purpose of the Occupational Safety and Health Act of 1970 is to assure, so far as possible, safe and healthful working conditions for every man and woman. The occupational health standard for ethylene dibromide (EDB) was promulgated to protect workers involved in the production, reaction, release, mixing, blending, packaging, repackaging, storage, transportation, handling, distribution, and use of EDB and products containing EDB. Under the final standard occupational exposure to EDB is to be limited to 0.1 ppm based on 8-hour time weighted average (TWA) with a STEL of 0.5 ppm. Employee exposure must be controlled to or below these levels through a combination of engineering, work practices, and other administrative controls.

The standard also provides for a medical surveillance program for all employees required to wear a respirator or employees exposed to levels of EDB at or above the action level of 0.05 ppm averaged over an 8-

hour period (TWA) for 30 or more days per year. The purpose of this document is to outline the medical surveillance provisions of the standard for EDB, and to provide further information to the physician regarding the examination and evaluation of workers exposed to EDB.

Section II provides a description of the medical surveillance program, notification and recordkeeping requirements for the employer and a discussion of the requirements for respirator use.

Section III discusses the acute and chronic effects associated with EDB exposure in man and experimental animal models. Included in this discussion are the carcinogenic, reproductive, and mutagenic effects seen in animal experiments and epidemiological studies.

Section IV outlines the recommended medical evaluation for workers exposed to EDB including details of the work and medical history, physical examination, recommended laboratory tests and medical procedures for emergency situations.

II. Medical Surveillance

Under the occupational health standard for EDB, the employer must make available a medical surveillance program for any employee required to wear a respirator or any employee exposed to EDB at or above the action level for a total of 30 or more days per year.

The medical surveillance program will include a medical and occupational history, including a reproductive history, a comprehensive medical examination and laboratory evaluation (if indicated). Employees who are required to wear a respirator must have an assessment of pulmonary status in addition to the other medical surveillance requirements.

The frequency of these examinations will be at the time of initial assignment and annually thereafter. The employer must provide the examining physician with following specific information: a copy of the EDB standard and appendices B and C, a description of the employee's duties as related to exposure, the exposure level to EDB, a description of personal protective equipment used, and all prior written medical opinions, regarding the employee, in the employer's possession or control.

For each examination required under this section, the employer shall obtain a written opinion from the examining physician which shall include:

(1) The physician's opinion as to whether the employee has any detected medical conditions or is taking any medications which would place the employee at increased risk of material impairment from exposure to EDB.

(2) Any recommended limitations on the employee's exposure to EDB or upon the use of personal protective equipment; this will include an opinion as to the employee's ability to wear a respirator.

(3) A statement that the employer has been informed by the physician of the results of the medical examinations and any medical conditions resulting from EDB exposure which require further explanation or treatment.

As part of the medical surveillance program, the physician must assess the pulmonary status of each employee who will be wearing a respirator. This assessment will include a chest x-ray initially and additional x-rays at least every five years or more frequently if indicated by the examining physician, and an annual pulmonary function test (detailed in Section IV).

The employer shall instruct the physician not to reveal in the written opinion given to the employer specific findings or diagnosis unrelated to occupational exposure. The employer shall provide a copy of the physician's written opinion to the affected employee within 15 days from its receipt.

III. Toxicology of Ethylene Dibromide

Both acute and chronic health effects associated with EDB exposure must be considered. The acute health effects seen in man include both immediate and delayed responses which are well documented. However, chronic toxicity in humans such as carcinogenicity, mutagenicity and adverse reproductive effects have to be derived from animal models.

Acute Effects

Immediate

Ethylene dibromide (EDB) is rapidly absorbed from the lungs when breathed as a vapor, from the gastrointestinal tract when taken by mouth, and through the skin on direct contact with the liquid form.

EDB is an irritant to the eyes, respiratory tract and mucous membranes. Inhalation exposure in humans has been associated with headache, decreased appetite, inability to sleep, nausea, and dizziness. Dermal contact may result in intense burning pain, swelling, blistering, and repeated contact may cause skin sensitization. Deaths have occurred following the inadvertent ingestion and inhalation of EDB. In one reported incident, accidental ingestion of 4.5 ml of EDB produced vomiting, diarrhea, abdominal pain, renal failure and death within 54 hours with central lobular necrosis of the liver and focal proximal tubular epithelial damage in the kidney found on autopsy.

Delayed.

Recently, while cleaning a storage tank, two workers at a California pesticide storage and formulation facility were exposed to an air concentration of EDB in excess of 28 ppm and had skin contact with a .3% solution of EDB. Both workers experienced intermittent loss of consciousness, agitation, nausea, and diarrhea, all of which appeared to be transient symptoms. However, at 12 and 72 hours respectively, post exposure, both workers died. Autopsies revealed dermal burns, extensive heart, kidney, liver and lung damage. It is important to note here the time sequence between exposure, symptoms and death.

Chronic Effects

Chronic health effects in humans and animals associated with EDB exposure can be divided into carcinogenic, reproductive and mutagenic effects.

Carcinogenic

EDB has been shown to cause cancer orally or by inhalation in 3 strains of rats and 2 strains of mice. In rats and mice, cancer was produced by inhalation exposures as low as 10 ppm. These animal data indicate that EDB is a *potential human carcinogen.* An epidemiologic study of cancer mortality provides suggestive evidence of excess cancer risk in workers exposed to EDB, but because of methodological weaknesses, this study is inconclusive. Studies in animals dosed with disulfiram and EDB clearly indicate a synergistic carcinogenic effect. Therefore, workers taking disulfiram (Antabuse®) may be at increased risk of these health effects because the two pathways involved in EDB metabolism are altered by this drug.

Reproductive/Mutagenic

EDB has been shown to be a mutagen and teratogen as well as a testicular toxin in several species of animals at levels of inhalation exposure as low as 10 ppm. Available human epidemiological data provide inconclusive evidence that EDB may affect fertility in male workers exposed to EDB due to methodological problems with the studies. The animal data noted above implies that EDB may potentially affect human reproductive capacity and the offspring of male or female EDB workers.

IV. Medical Evaluation

As discussed in Section III, EDB is a potential human carcinogen causing a variety of neoplasms including stomach, nasal, and lung cancers in experimental animals and a potential human reproductive hazard causing pathological changes in sperm, testes and fertility status in experimental animals. EDB is also a known human liver, kidney, skin and central nervous system toxin. It is therefore extremely important for the examining physician to evaluate the EDB-exposed worker carefully and completely and to focus the examination on these potential health hazards.

The medical evaluation should include a detailed work and medical history, a pertinent review of systems, a complete physical examination and laboratory studies to monitor potential biological changes.

A complete and detailed work history is important in the initial evaluation. A listing of all previous employment with information on work processes, exposure to EDB or other toxic substances, respiratory protective equipment used, and previous medical surveillance should all be included in the worker's record. Information concerning on-the-job personal hygiene, smoking or eating habits in work areas, laundry procedures, and use of any protective clothing or respiratory protective equipment should be noted.

The medical history should include a listing of all past and current medical conditions, especially any neurological, gastrointestinal, kidney, dermatological, genetic or reproductive problems. Also, a list of current medication especially disulfiram (Antabuse®), previous surgeries, hospitalizations, allergies,

smoking history and alcohol consumption should be noted.

A complete review of systems should be performed to assess both recognized complaints and subtle or slowly acquired symptoms which the worker might not appreciate as being significant. The review of symptoms should include the following:

General—weight loss, fatigue, malaise.

Head, eyes, ears, nose, throat—headache, dizziness, and visual disturbances, nasal irritation.

Cardio-pulmonary—shortness of breath, cough, tachypnea, tachycardia and chest pain.

Gastrointestinal—nausea, vomiting, decreased appetite, abdominal pain, jaundice, diarrhea.

Genito-urinary—history of infertility, impotence, loss of libido, abnormal menstrual periods, history of miscarriages, still births, kidney failure, oliguria, and testicular disease.

Skin—rashes, vesicles, and burns.

Neurological—insomnia, fatigue, dizziness, confusion, and depression.

The physical examination should emphasize the pulmonary, cardiac, neurological, gastrointestinal, genito-urinary, and dermal systems. Included in this examination should be a complete assessment of the employee's ability to wear a respirator (if required). This should include a complete head, eyes, ears, nose, throat, thorax and pulmonary examination.

A complete neurological examination should include an adequate mental status evaluation including a search for behavioral and psychological disturbances, memory testing, evaluation for irritability, insomnia, hallucination, depression, restlessness and nervousness.

The abdominal examination should include auscultation for bowel sounds and abdominal bruits and palpation for hepatomegaly, masses, and diffuse abdominal tenderness.

Genito-urinary examination should include examination of testicles in male employees and pelvic examination in female employees.

The dermal examination should focus on evidence of jaundice, burns or blistering.

As part of the medical evaluations, the standard requires that the following laboratory studies be performed:

(1) Serum calcium, phosphorus, glucose, blood urea nitrogen, urea acid, creatinine, cholesterol, total protein, albumin, alkaline phosphatase, LDH, SGOT, SGPT and GGTP.

(2) Routine urinalysis with microscopic examination.

Further, the phyician is authorized to recommend any additional laboratory or other test which is deemed necessary in accordance with sound medical practice.

In addition, the standard requires that the following examinations be performed if the employee is going to wear a respirator:

(3) Chest X-ray (posterior-anterior and lateral views) to be performed initially and at 5 year intervals (unless indicated more frequently by the examining physician).

(4) Pulmonary function testing; including FVC and FEV_1 with interpretation.

This test allows those individuals who will be exposed above the PEL regardless of the duration of exposure to be included in the medical surveillance program.

In addition, respirator usage presents an excess burden to the pulmonary system of the employee. This burden may result in symptoms such as shortness of breath, chest pain, dizziness or fatigue. All of these symptoms will be greatly exacerbated by pre-existing lung disease such as chronic bronchitis, emphysema, asthma or pneumoconiosis. It is, therefore, imperative that all employees who will be wearing respirators be medically screened to determine fitness for respirator usage. OSHA believes that the physician can best accomplish this through utilization of a physical examination, including a pulmonary function test and a chest x-ray.

Emergency Situations

In the event that an employee is exposed to EDB in an emergency situation or develops signs or symptoms associated with acute toxicity from EDB exposure, the employer shall immediately provide the employee with a medical examination. This examination shall include all the steps necessary to stabilize the health of the employee and a 72 hour medical observation period to assure that the often unexpected, serious delayed systemic effects from acute exposure are minimized. This observation period should take place in a medical facility, preferably a hospital, where a licensed physician will be responsible for supervising all medical care delivery.

Appendix D—To Section 1019.1048—OSHA Laboratory Modification of NIOSH Method P&CAM 260

Analyte: Ethylene dibromide
Matrix: Air
Procedure: Adsorption on charcoal, desorption with 10% CS_2 in benzene, GC

1. Principle of method.
   - 1.1 A known volume of air is drawn through a charcoal tube to trap the organic vapors present.
   - 1.2 The charcoal in the tube is transferred to a small, stoppered sample vial, and the analyte is desorbed with 10% CS_2 in benzene.
   - 1.3 An aliquot of the desorbed sample is injected into a gas chromatograph.
   - 1.4 The area of the resulting peak is determined and compared with areas obtained for standards.
2. Advantages and disadvantages of the method.
   - 2.1 The sample device is small, portable, and involves no liquids. Interferences are minimal, and most of those which do occur can be eliminated by altering chromatographic conditions. The tubes are analyzed by means of a quick, instrumental method.
   - 2.2 The amount of sample which can be taken is limited by the number of milligrams that the tube will hold before overloading. When the sample value obtained for the backup section of the charcoal tube exceeds 25 percent of that found on the front section, the possibility of sample loss exists.
   - 2.3 The precision of the method is limited by the reproducibility of the pressure drop across the tubes. This drop will affect the flow rate and cause the volume to be imprecise, because the pump is usually calibrated for one tube only.
3. Apparatus.
   - 3.1 A calibrated personal sampling pump whose flow can be determined within ±5 percent at the recommended flow rate.
   - 3.2 Charcoal tubes: Glass tube with both ends flame sealed, 7 cm long with a 6-mm O.D. and a 4-mm I.D., containing 2 sections of 20/40 mesh activated charcoal separated by a 2-mm portion of urethane foam. The activated charcoal is prepared from coconut shells and is fired at 600°C prior to packing. The adsorbing section contains 100 mg of charcoal, the back-up section 50 mg. A 3-mm portion of urethane foam is placed between the outlet end of the tube and the back-up section. A plug of silicated glass wool is placed in front of the adsorbing section. The pressure drop across the tube must be less than one inch of mercury at a flow rate of 1 liter per minute.
   - 3.3 Gas chromatograph equipped with an electron capture detector.
   - 3.4 Column (10-ft × ⅛-in stainless steel) packed with 10%/20 Supelcoport coated with 10 percent SP 1000.
   - 3.5 An electronic integrator of some other suitable method for measuring peak area.
   - 3.6 Two-milliliter sample vials with Teflon-lined caps.
   - 3.7 Microliter syringes: 10-microliter, and other convenient sizes for making standards.
   - 3.8 Pipets: 1.0-ml delivery pipets.
   - 3.9 Volumetric flasks: convenient sizes for making standard solutions.
4. Reagents.
   - 4.1 Chromatographic quality CS_2 and benzene.
   - 4.2 Ethylene dibromide, reagent grade.
   - 4.3 Filtered compressed air.
   - 4.4 Purified nitrogen.
5. Procedure.
   - 5.1 Cleaning of equipment. All glassware used for the laboratory analysis should be properly cleaned and free of organics which could interfere in the analysis.
   - 5.2 Calibration of personal pumps. Each pump must be calibrated with a representative charcoal tube in the line.
   - 5.3 Collection and shipping of samples.
   - 5.3.1 Immediately before sampling, break the ends of the tube to provide an opening at least one-half the internal diameter of the tube (2 mm).
   - 5.3.2 The smaller section of the charcoal is used as the backup and should be placed nearest the sampling pump.
   - 5.3.3 The charcoal should be placed in a vertical position during sampling to minimize channeling through the charcoal.
   - 5.3.4 Air being sampled should not be passed through any hose or tubing before entering the charcoal tube. EDB is readily absorbed by tygon tubing. This will make the sample results read low. The use of stainless steel tubing will avoid this problem.
   - 5.3.5 A sample size of 10 liter is recommended. Sample at a flow rate of approximately 0.2 liters per minute. The

flow rate should be known with an accuracy of at least ±5 percent.

5.3.6 The temperature and pressure of the atmosphere being sampled should be recorded.

5.3.7 The charcoal tubes should be capped with the supplied plactic caps immediately after sampling. Rubber caps should not be used.

5.3.8 Submit at least one blank tube (a charcoal tube subjected to the same handling procedures, without having any air drawn through it) with each set of samples.

5.3.9 Take necessary shipping and packing precautions to minimize breakage of samples.

5.4 Analysis of samples.

5.4.1 Preparation of samples. In preparation for analysis, each charcoal tube is scored with a file in front of the first section of charcoal and broken open. The glass wool is removed and discarded. The charcoal in the first (larger) section is transferred to a 2-mL vial. The separating section of foam is removed and discarded; the section is transferred to another capped vial. These two sections are analyzed separately.

5.4.2 Desorption of samples. Prior to analysis, 1.0 mL of 10% CS_2 in benzene is pipetted into each sample container. Desorption should be done for 30 minutes with occasional shaking. The sample vials are recapped as soon as the solvent is added.

5.4.3 GC conditions. The typical operating conditions for the gas chromatograph area:

1. 30 mL/min (60 psig) nitrogen carrier gas flow.
2. 250°C Injector temperature.
3. 300° C Detector temperature.
4. 180° C Column temperature.

5.4.4 Injection. Solvent flush technique or equivalent.

5.4.5 Measurement of area. The area of the sample peak is measured by an electronic integrator or some other suitable form of area measurement, and preliminary results are read from a standard curve prepared as discussed below.

5.5 Determination of desorption efficiency.

5.5.1 Importance of determination. The desorption efficiency of a particular compound can vary from one laboratory to another and also from one batch of charcoal to another. Thus, it is necessary to determine, at least once, the percentage of the specific compound that is removed in the desorption process, provided the same batch of charcoal is used.

5.5.2 Procedure for determining desorption efficiency. The reference portion of the charcoal tube is removed. To the remaining portion, amounts representing 0.5X, 1X, and 2X (X represents PEL) based on a 10 L air sample are injected onto several tubes at each level. Dilution of ethylene dibromide with benzene are made to allow injection of measurable quantities. These tubes are then allowed to equilibrate at least overnight. Following equilibration they are analyzed following the same procedure as the samples. The desorption efficiency, amount recovered/amount added, is plotted versus the amount of analyte found. This curve is used to correct for adsorption losses.

6. Calibration and standards.

A series of standards, varying in concentration over the range of interest, is prepared and analyzed under the same GC conditions and during the same time period as the unknown samples. Curves are prepared by plotting concentration versus peak area.

Note.—Since no internal standard is used in the method, standard solutions must be analyzed at the same time that the sample analysis is done. This will minimize the effect of known day-to-day variations and variations during the same day of the electron capture detector response. Multiple injections are necessary.

7. Calculations.

Read the weight, corresponding to each peak area from the standard curve, correct for the blank, correct for the desorption efficiency, and make necessary air volume corrections.

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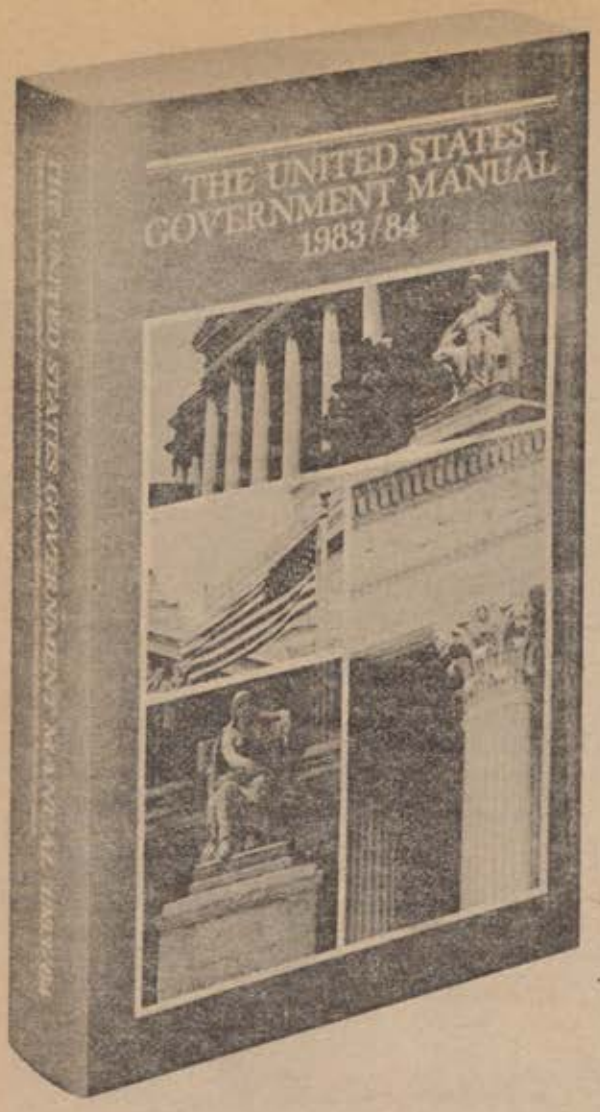
S. 602 / Pub. L. 98-111 Radio Broadcasting to Cuba Act. (Oct. 4, 1983; 97 Stat 749 Price: $1.75

S.J. Res. 142 / Pub. L. 98-112 Designating the week of October 3 through October 9, 1983, as "National Productivity Improvement Week". (Oct. 4, 1983; 97 Stat 754 Price: $1.50



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MasterCard and VISA accepted.

Credit Card Orders Only

Total charges $_____

Fill in the boxes below

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Customer's Telephone No.'s

Area Code ☐☐☐ Home ☐☐☐-☐☐☐☐ Area Code ☐☐☐ Office ☐☐☐-☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Please send me _____ copies of The United States Government Manual, 1983/84, at $9.00 per copy. Stock No. 022-003-01099-8

PLEASE PRINT OR TYPE

Company or Personal Name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

For Office Use Only

Quantity	Charges
_____ Publications	
_____ Subscription	
Special Shipping Charges	
International Handling	
Special Charges	
OPNR	
_____ UPNS	
_____ Balance Due	
_____ Discount	
_____ Refund	

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